

**TE IWI O NGAI TAHU: AN EXAMINATION OF NGAI  
TAHU'S APPROACH TO, AND INTERNAL EXPRESSION  
OF, TINO RANGATIRATANGA**

---

**A thesis submitted to the Sociology Department, University of Canterbury,  
in fulfillment of the requirements for the Degree of Master of Arts in  
Sociology**

**by**

**Alexandra Emma-Jane Highman**

---

**University of Canterbury  
December, 1997**

THESIS

DO

412.7

.N4

.H638

1997

For Grandad

UNIVERSITY OF CANTERBURY  
SOCIOLOGY DEPT.

# **Table of Contents**

<b>Acknowledgements</b>	
<b>Abstract</b>	
<b>1 Introduction</b>	<b>1</b>
<b>2 A Contextualisation of Tino Rangatiratanga</b>	<b>10</b>
<b>3 The Loss of Land and Ngai Tahu Rangatiratanga</b>	<b>25</b>
<b>4 Te Runanga o Ngai Tahu Act (1996) and its Significance to Ngai Tahu's Tino Rangatiratanga</b>	<b>34</b>
<b>5 Ngai Tahu's New Organisational Structure and the Internal Expression of Rangatiratanga</b>	<b>53</b>
<b>6 The Heads of Agreement and the Differences in Approach to Tino Rangatiratanga</b>	<b>81</b>
<b>7 Conclusion</b>	<b>115</b>
<b>References</b>	<b>130</b>
<b>Appendices</b>	<b>136</b>

## Acknowledgments

In completing this thesis, I would like to express my gratitude to all the individuals whose support made this research endeavour possible. Thank you to:

Bill Willmott, who as supervisor went above and beyond his duties, maintaining a positive attitude and an unrelenting enthusiasm, which I found so reassuring; Stephanie Kelly, who shared her own research experiences of Ngai Tahu, willingness to proof read, research contacts, car trips and coffee; Dr Anne Parsonson and Sir Tipene O'Regan, who welcomed me into their History 624 Honours class in 1996, and who provided a wealth of valuable information concerning the history of Maori/Pakeha relations and Ngai Tahu perspectives; Dr Augie Fleras, who brought a new sociological perspective to bear on this research making this a better thesis; Toua and Poua, for their whanau support on my journeys as a researcher; Rik Tau, Te Maire Tau and Mahara Te Aike, the three interviewees, for not only their unreserved participation in this research, but their willingness to be involved in ongoing communications throughout; te whanau o Ngai Tuahuriri, whose acceptance of my research, and I, on our sudden appearance meant a great deal to me; the Te Runanga o Ngai Tahu directors for allowing me, as a researcher, to be present at their hui; all the members of the Ngai Tahu Whanui who shared their views with me; Sandra Ebert, for allowing me continual access to her computer; and finally Garrick Ebert, for his continual support and understanding.

## **ABSTRACT**

**This thesis establishes a comprehensive understanding of the contemporary exercise of tino rangatiratanga by Ngai Tahu. This is achieved by examining Ngai Tahu's approach to, and internal expression of, tino rangatiratanga.**

**In 1996 the Te Runanga o Ngai Tahu Act was passed. This, for the first time since the Treaty of Waitangi and Pakeha colonisation, legally recognised an organisational structure that was tribally derived and, in turn, allowed for a new degree of self-determination. This qualitative research provides an insight into the directions Ngai Tahu is embarking upon under its new administration in the attainment of tino rangatiratanga.**

**Ngai Tahu's new organisational structure, since its formal inception, has not operated without its problems. These arise from a transitional phase which indicates a shift in paradigm from grievance mode to development mode. Internally, this has created a time of tension. Some runanga struggle to reaffirm their rangatiratanga in the wake of its tribal collectivisation represented in Te Runanga o Ngai Tahu. During this phase, communication throughout the organisational structure is paramount. This will ensure the recognition of rangatiratanga at all its levels and, thus, maintain tribal cohesion.**

**Within Ngai Tahu, tino rangatiratanga is approached differently by its beneficiaries depending upon what element of the tribal make-up is being emphasised. For some, tino rangatiratanga is that expressed by the administrative structure, where it is translated into the notion of achieving economic sovereignty for the iwi. For others, it is derived from an individual's whakapapa (genealogy), with its collective expression revolving around the hapu and runanga only. With knowledge of these two divergent approaches to tino rangatiratanga, Ngai Tahu can negotiate a course of future development that embraces both the tribal, runanga and individual elements inherent in them both.**

# **CHAPTER ONE**

## **Introduction**

Tino rangatiratanga can often be a mystifying term to those unaware that it carries with it concepts dependent upon the context in which it is used. Tino rangatiratanga's definition for groups such as Te Ahi Kaa refers largely to absolute Maori sovereignty in New Zealand society. It is the seeming reverse Maori option of that desired by white supremacists, involving the simplistic notion of one race's domination of all others within a nation. Absolute Maori sovereignty entails the gaining of all forms of sovereignty - territorial, economic, political and cultural radically redesigning New Zealand's social order along racial lines which is underpinned by Maori domination. Justification for such an agenda arises in that, prior to Pakeha colonisation and the Treaty of Waitangi, Maori hapu and iwi of New Zealand were the dominant sovereigns.

The tino rangatiratanga referred to above is not equivalent to the predominant definition given to it by Ngai Tahu. In this thesis I argue that Ngai Tahu's approach to tino rangatiratanga, and thus its definition, refers largely to the achievement of economic sovereignty within the realms of New Zealand's already established social order. In other words, it involves the achievement of economic self-determination via the ownership of assets within the status quo of New Zealand's society. Absolute and indivisible sovereignty over New Zealand's territory, government and law that established a certain social order (society) belongs to the Crown. In analysing Ngai Tahu's approach to tino rangatiratanga, Ngai Tahu's internal expression of rangatiratanga in the organisational structure will also be considered.

The methods employed in this research have been primarily threefold and co-dependent. First, research commenced with the analysis of relevant literature such as Ngai Tahu Maori Trust Board Annual Reports, a Te Runanga o Ngai Tahu Annual Report (at the time of this research there was only one), issues of the Ngai Tahu magazine *Te Karaka*, previous theses discussing Ngai Tahu,

articles written by Ngai Tahu spokespersons, and articles concerning tino rangatiratanga itself.

Second, my research involved hours of participant observation throughout 1996 in various forums. These included attendance at Te Runanga hui, Ngai Tuahuriri runanga meetings and associated hui, a history honours course co-lectured by Sir Tipene O'Regan (Principal Negotiator for Ngai Tahu) and Dr Anne Parsonson, a public meeting held by the Office for Treaty Settlements (the Crown) regarding the Ngai Tahu settlement, and the 1996 Hui-a-Tau which is an annual gathering of the Ngai Tahu Whanui.<sup>1</sup>

Third, I conducted three interviews in 1997 with members of the Ngai Tahu Whanui to help enlarge on the issues identified by the two previous research methods. The interview technique employed was semi-structured. This allowed for a degree of flexibility within the topic areas whilst at the same time giving an overall focus and structure. Interviewees were asked largely the same basic questions with additional material depending on the natural flow of the interview and the role of the person interviewed.

I intentionally approached three individuals who occupied different roles within Ngai Tahu's organisational structure in order to get a reasonable spread of opinion. Primarily, the information I sought was how these members of the Ngai Tahu Whanui perceive the concept of tino rangatiratanga at individual, hapu and iwi levels. I expected that individual perceptions would vary according to the different sections of Ngai Tahu's organisational structure in which they operated. However, they were remarkably similar, especially at the individual and hapu levels. The individuals interviewed were Mahara Te Aika, former treasurer of Ngai Tuahuriri Runanga; Te Maire Tau, Director of Ngai Tahu Research Centre;

---

<sup>1</sup>Whanui refers to the collective of Ngai Tahu individuals linked by whakapapa, or genealogy.



and Rakihiia Tau, former Principal Negotiator for Ngai Tahu, Upoko (head) of Ngai Tuahuriri Runanga (hapu council), Chairperson and Director of Ngai Tahu Development Corporation and the person who brought the Ngai Tahu Claim before the Waitangi Tribunal in 1987. Reasons for the similarities can be speculated upon, such as that, they all hailed from the same hapu and the Tau's are father and son.

Such similarities in interviewees perceptions indicate that a methodological improvement to this research would be to interview further individuals from different runanga throughout the Ngai Tahu rohe, or territory, and be a participant observer at other runanga meetings as well. However, working within a framework of limited time, not to mention money, meant that this was not possible. However, focusing on individuals hailing from one runanga, and attending only that runanga's meetings meant that I could devote more time to familiarising myself with the views expressed. Concentrating on Ngai Tuahuriri runanga proved to be an extremely important point of focus for this thesis. Some of its beneficiaries adhere to an alternative perspective of tino rangatiratanga to that which predominates in Ngai Tahu. This perspective highlights a division within the tribe which is the focus of Chapter 6. The gap between these two perspectives has widened. It was at the heart of legal action sought against the proposed Ngai Tahu settlement which occurred soon after this research's completion. The moves for an interim injunction in the High Court were promptly withdrawn soon after for reasons as yet unknown. This occurred almost on the eve of the signing of an historic Ngai Tahu settlement which took place on the November 21 1997.

Furthermore, the similarity in perspective of the interviewees towards tino rangatiratanga had an important impact on this research. For instance, the most outspoken and widely known of the three, R. Tau, naturally provided the key

interview that was utilised the most for supplying quotations. This is not to downplay the importance of the other two in supporting, by way of their interviews, many of the opinions of R. Tau, as well as expressing their own. However, for reasons discussed below, R. Tau's interview became predominant.

This being the case, the question arises: how valid are the data gained from these interviews? I argue that they are extremely valid. The interview data not only complement to the information gathered from the other research methods employed, documentary research and participant observation, but they are used as a 'strategy for discovery', as is common in qualitative research.<sup>2</sup> All three interviews were intended to find out 'what kind of things are happening rather than to determine the frequency of predetermined kinds of things that the researcher already believes can happen.'<sup>3</sup> This is why only three interviews nevertheless are valuable for this research, especially when the interviewees have different roles in the Ngai Tahu organisational structure.

It also indicates why R. Tau's interview is centrally important to this research. By virtue of his numerous roles, authority and experience in the Ngai Tahu organisational structure, his overall perspective can be cast quite widely. Thus, his interview was most valuable for fathoming the kind of things that are happening and have happened within the structure. Furthermore, his perspective, particularly of tribally expressed tino rangatiratanga, fell into opposition to that of O'Regan. These two men have similar roles, status and experience in Ngai Tahu's organisational structure, hence the natural juxtaposition.

---

<sup>2</sup>Fielding, 1993: 136

<sup>3</sup>Ibid: 137

Early in this research experience I undertook beginners classes in te reo Maori. The reason for this was that I was acutely aware of my inadequacies in pronunciation and knowledge of te reo and was somewhat embarrassed about it. This was especially the case when entering Te Runanga o Ngai Tahu hui on the pretext that I am Ngai Tahu, and when dealing with Ngai Tahu members quite accomplished in te reo. Furthermore, although the predominant language for Ngai Tahu is still English, getting to grips with pronunciation of te reo, as well as understanding a few common Maori expressions and words, denotes a respect and empathy for Ngai Tahu and Maori culture in general. This, I believe, helped me establish a rapport in interview settings and informal gatherings at hui. Beginning te reo was beneficial not only for this research, but for my existence within an increasingly bicultural society.

In dealing with initial access aspects of this research, at runanga and Te Runanga hui particularly, I had to ensure that I was not there under false pretences. Though I am Ngai Tahu and have a right to be present at Ngai Tahu hui by virtue of my genealogy, I was still required to make my research intentions known to the directors of Te Runanga. This was to assure all that the purpose of my research was, in fact, honourable and not for some sort of smear campaign.

I know of only one non-Ngai Tahu researcher at present with access to Te Runanga hui. Though she has been involved in things Ngai Tahu for approximately seven years, she is still denied access to some runanga hui. I am unsure of how my research intentions would have been received at any hui had I not been Ngai Tahu. It is evident that people who come to Ngai Tahu from outside the whakapapa net, especially if research is involved, are still treated with some suspicion. One common question asked by many Ngai Tahu people is whether he/she is Ngai Tahu in order to establish the subject's credentials of

either being one of 'us' (Ngai Tahu) or one of 'them' (Pakeha). This is not to say that many Pakeha are not held in high esteem, for some of Ngai Tahu's key positions within the organisational structure are held by Pakeha, but that, for many Ngai Tahu, erring on the side of caution is wisest.

The suspicion harboured by many Ngai Tahu has historical foundations, I believe, arising from the Crown breaching the Treaty of Waitangi and conducting fraudulent land deals. The outcome for Ngai Tahu, and Maori iwi in general, was economic, social and cultural dislocation. The legacy of this is still evident today, manifesting as chronic mistrust and suspicion in tribal affairs of both an internal and external nature. Not only are external researchers regarded with suspicion, but internally and beneath the surface, Ngai Tahu's administrative structure is not completely trusted by many of its own Whanui.<sup>4</sup>

Chapter Two of this thesis is an introductory chapter. It contextualises tino rangatiratanga, discussing its meaning and its politicisation in the debate over indigenous rights. Ngai Tahu's location in this debate is outlined, illustrating how it impacts on the Ngai Tahu/Crown relationship. The future development of indigenous rights in New Zealand is also examined. This chapter serves the important function of placing the material of this thesis within the context of New Zealand society as a whole so that the Ngai Tahu settlement can be seen not as some isolated event with no relevance to those other than Ngai Tahu, but as an event with implications for all New Zealanders.

Chapter Three imparts to the reader knowledge which gives a depth of understanding of the elements which have been in the Ngai Tahu 'collective consciousness' for generations, namely, the Crown land purchases of the

---

<sup>4</sup>Evidence of this occurs in the discussion of the negotiations surrounding the Heads of Agreement for an eventual settlement, especially Chapters 5 and 6.

nineteenth century leading to the Ngai Tahu Claim, Te Kereeme. Such an understanding is necessary to appreciate how historic events impact on the present directions of Te Runanga with regards to the attainment of tino rangatiratanga. To study contemporary Ngai Tahu devoid of any discussion of such historical events, which have so profoundly impacted on the iwi, would be superficial, if not impossible.

Chapter Four analyses the Te Runanga o Ngai Tahu Act (1996) and its significance to the tino rangatiratanga of Ngai Tahu. This chapter begins, again, historically discussing how the Crown via numerous pieces of legislation delegatised the Ngai Tahu as Treaty partner. Tino rangatiratanga was destroyed not only by the loss of land as Chapter Two illustrates, but also by pieces of legislation specifically designed to do so. This chapter then moves on to discuss how Ngai Tahu legalised itself by embodying its own unique identity into an item of legislation. In doing so, Ngai Tahu iwi, through crafting its own organisational structure, recaptured a degree of self-determination, an important element of tino rangatiratanga.

Chapter Five endeavours to illustrate the mechanics of Ngai Tahu's organisational structure initiated by the Te Runanga o Ngai Tahu Act (1996). This turns the focus of the inquiry inward on Ngai Tahu to establish how rangatiratanga is internally expressed. The internal dynamics of the organisational structure both in theory and in practice are examined. The implications of these dynamics on the expression of tino rangatiratanga in the Ngai Tahu organisational structure are discussed. This indicates that a renegotiation of rangatiratanga, between runanga and Te Runanga, is taking place.

The renegotiation of rangatiratanga leads into Chapter Six, which enters into an investigation of two dominant approaches within Ngai Tahu to tino rangatiratanga. The 1996 Heads of Agreement, setting out in principle matters agreed to between Ngai Tahu and Crown negotiators to settle the Ngai Tahu Claim, acts as the catalyst highlighting these two approaches. This chapter illustrates how the negotiation camp's approach to tino rangatiratanga, which is translated into the achievement of economic sovereignty of the iwi, is at odds with the alternative perspective presented by the litigation camp that focuses on the individual and hapu.

Finally, I wish to draw the readers attention to Appendix 5 which was a serendipitous outcome of this research. Appendix 5 is a chapter in itself which provides a discussion of notions of Crown sovereignty in New Zealand society today against the backdrop of the Treaty of Waitangi. Due to the indirect relationship to the examination of Ngai Tahu's approach to tino rangatiratanga this chapter has been placed in the appendix.

## **CHAPTER TWO**

### **A Contextualisation of Tino Rangatiratanga**

## Tino Rangatiratanga - The Concept:

With increasing frequency over the past 20 years middle New Zealand, via the six o'clock news, newspapers and magazines, has been confronted with the expression "*tino rangatiratanga*". This chapter considers what lies behind this expression, which is oftentimes used as a symbol of Maori assertiveness. The aim is to contextualise tino rangatiratanga, its meaning as a concept and its politicisation as the catch-cry for the recognition of indigenous rights in New Zealand. In doing so, Ngai Tahu's approach to tino rangatiratanga is located within the discourse on indigenous rights. From here, the discussion turns to the Maori/Crown relationship, and how the principle of partnership enshrined in the Treaty, entails greater recognition of tino rangatiratanga in the machinery of the state.

The concept of tino rangatiratanga is an intangible quality, such as power or love, and hence will frustrate any attempt to be defined simply.<sup>1</sup> English translations of tino rangatiratanga are numerous and oftentimes diminish the full appreciation of the concept or emphasise only one element of it. Definitions include: Maori sovereignty, Maori autonomy, tribal autonomy, and full power and control.<sup>2</sup> Kawharu, in his translation of the Maori text of the Treaty of Waitangi, describes it as meaning 'the unqualified exercise of...chieftainship.'<sup>3</sup> The Waitangi Tribunal in the Ngai Tahu Sea Fisheries Report speaks of the tribal right of 'self-regulation or self-management...[as an] inherent element of tino rangatiratanga.'<sup>4</sup> The concept of tino rangatiratanga is considerably widened by the Maori Congress, which recognises that it encapsulates four fundamental elements:

---

<sup>1</sup>Fleras and Maaka, 1997: 8

<sup>2</sup>Durie, 1995: 3.5

<sup>3</sup>Kawharu, 1989: 321

<sup>4</sup>Wai-27, 1992: 69



**mana wairua** - a spiritual dimension relevant to all aspects of Maori life and organisation;

**mana whenua, mana rangatira** - the security of relationships with the land and other physical resources and the authority of tribes to exercise control over their own resources;

**mana tangata** - individual well being, citizenship rights and freedom from financial dependence on governments.

**mana Ariki** - the authority of Ariki [paramount tribal leaders] to lead and guide their own and other peoples.<sup>5</sup>

The definition of tino rangatiratanga has also evolved over time, its largest influence being the Treaty of Waitangi and notions of constitutional sovereignty. As Kawharu explains, pre-contact and 'the sort of rangatiratanga that would have been understood by the Maori of 1840' was 'rangatiratanga (being derived from *rangatira*: chief) meaning evidence of *breeding and greatness*.'<sup>6</sup> The evidence needed lay in the ability of a rangatira to successfully negotiate between the sacred and the secular worlds influencing Maori life. Thus, it is understandable that various authors have found definitional precision allusive.

To add to these numerous definitions of tino rangatiratanga are the varying interpretations. Tino rangatiratanga translated into notions of Maori sovereignty can be expressed on a continuum ranging from conservative to liberal to radical agendas. A conservative agenda is characterised here as one that wishes to advance the best interests of a Maori organisation, such as an iwi, working with the established institutions of society. Tribal self-determination and development

---

<sup>5</sup>Durie, 1995: 3.8

<sup>6</sup>Kawharu, 1989: xix

of such an organisation occurs with the control of assets in their own territory as guaranteed by the Treaty of Waitangi. A liberal agenda proposes to restructure New Zealand's given institutions so that Maori organisations have a degree of power-sharing within them, and hence, in society at large. Such a position derives from the principle of partnership formalised by the Treaty of Waitangi. This perspective also develops the possibility for specifically created Maori institutions.<sup>7</sup> A radical agenda adheres to an extreme position of Maori organisations having complete control of all of New Zealand's institutions and resources by virtue of being Aotearoa's original inhabitants.

One element common to all these definitions and interpretations of tino rangatiratanga is the power of **self-determination**. This implies active 'Maori ownership and control over the future...which can be applied at iwi and hapu levels as well as to all Maori people collectively.'<sup>8</sup>

By no means has the call for Maori self-determination, captured by the expression "*tino rangatiratanga*", been confined to New Zealand. Worldwide, 'indigenous peoples in the white settler dominions of Canada, Australia and Aotearoa New Zealand are becoming increasingly politicised in the hopes of repriming their relationship with society at large.'<sup>9</sup> The notion of absolute and indivisible sovereignty of white settler nations-states appears to be unravelling. Such moves towards self-determination have arisen from a sense of alienation and marginalisation in their own land, indigenous peoples are 'redefining their basis of belonging.'<sup>10</sup>

---

<sup>7</sup>Fleras and Maaka, 1997: 5

<sup>8</sup>Wai-27, 1992: 69

<sup>9</sup>Fleras and Maaka, 1997: 3

<sup>10</sup>Ibid.

## Te Tiriti o Waitangi/The Treaty of Waitangi:

In 1840 the signing of the Treaty of Waitangi brought tino rangatiratanga into the context of safeguarding Maori resources. Hence, is now pivotal in legitimising and justifying calls for the recognition and exercise of indigenous rights.

The Treaty of Waitangi, a contract between British, or Pakeha (also means non-Maori), colonisers and numerous sovereign Maori tribes, had both an English and a Maori text. These two texts had unequivalent language, which forged two divergent understandings of the Treaty contract and, thus, a different belief in the role either ethnies would play in New Zealand's development. The Treaty was divided into three articles or sections.<sup>11</sup>

In Article One, the English words *civil government* and *sovereignty* were translated and defined by one word, *kawanatanga*.<sup>12</sup> The familiar word for Maori at the time was *kawana*, or governor, which had associations with Roman governors in the bible and governors in Australia such as Governor Gipps.<sup>13</sup> Orange states that a *kawana* represented 'authority in the abstract rather than a concrete sense'.<sup>14</sup> This was the only cultural precedent to date. The land and other resource guarantees in Article Two involving full exclusive and undisturbed *possession* was translated to mean *tino rangatiratanga*. For Maori, however, *tino rangatiratanga* involved far more than mere possession but chiefly power, authority and jurisdiction including the practical, physical and spiritual dimensions of it. *Tino rangatiratanga* more closely translated to the English concept of sovereignty, far more so than *kawanatanga*. Therefore, it is safe to conclude that Maori, at the time, assumed that their concept of sovereign rights were being confirmed rather than denied. After all, the Confederated rangatira

---

<sup>11</sup> See Appendix 1 for the full text of the Treaty including a translation of the Maori text.

<sup>12</sup> Orange, 1987: 39

<sup>13</sup> Ibid.

<sup>14</sup> Ibid: 41

had rangatiratanga translated to mean *independence* in the Declaration of Independence 1835.<sup>15</sup> In the final article, Article Three, Maori were guaranteed the same rights of citizenship as British subjects.

The key understandings arising out of the Treaty for Maori was that it represented the will of the two ethnies to share power. Maori tino rangatiratanga rights over their land and resources which they wished to keep were reaffirmed, and Pakeha were accorded the powers of governorship to make laws that protected both Maori and Pakeha ways of life. For Pakeha, however, the Treaty symbolised a definite transfer of power from Maori to Pakeha enabling the institution of absolute and indivisible British sovereignty. In turn, this legitimised the carrying out of the British programme of colonisation of New Zealand.<sup>16</sup>

The fundamental differences of understanding concerning the Treaty between Maori and Pakeha inevitably led to conflict. Fraudulent Crown land deals, unlawful land confiscations by the Crown, as well as confiscations effected by newly created colonial law, culminated in bloody confrontations.<sup>17</sup> Other bloodless confrontations featured petitions and protracted legal battles lasting throughout the twentieth century. In all instances of dispute, however, the common outcome became 'chronic mistrust' between the two ethnies.<sup>18</sup>

Notwithstanding this less than peaceful beginning, the predominant historical interpretation of British settlement in New Zealand characterised it as a success story. A story of how both Maori and Pakeha 'had been brought together in a single political community [throughout which] Maori enjoyed formal equality with Pakeha.'<sup>19</sup> The popularly held belief by many New Zealanders was both

---

<sup>15</sup>Ibid.

<sup>16</sup>Fleras and Maaka, 1997: 6

<sup>17</sup>Ibid: 6; Oliver, 1995: 19

<sup>18</sup>Fleras and Maaka, 1997: 6

<sup>19</sup>Renwick, 1993: 29

assimilationist and ethnocentric, it was believed that Maori cultural difference would eventually (and voluntarily) disappear.<sup>20</sup>

### **Maori Political Renaissance:**

With the arrival of the 1960s, a decade characterised by global political change, debates on Maori self-determination and a Maori interpretation of the Treaty began to surface.<sup>21</sup> Such debates were 'deeply controversial', as they challenged and destabilised popularly held beliefs regarding New Zealand's 'equitable' past.<sup>22</sup>

During the 1970s there was 'the increasingly belligerent assertion of Maori political and cultural self-determination.'<sup>23</sup> Those perceived to be young 'radicals' and the respected face of Maoridom, the tribal elders, were united in 'making the point that the broken promises of the Treaty were at the heart of grievances that Maori had long harboured.'<sup>24</sup> Waitangi Day, New Zealand's national day, became the focus of Maori protest. Agendas adhering to conservative, liberal and radical approaches to tino rangatiratanga were evident in this unified claim.

The Treaty's tino rangatiratanga emerged not only as the concept into which indigenous rights were conflated, but also as a symbol for many Maori against the continued assertion of absolute and indivisible Crown sovereignty.<sup>25</sup> Whilst the majority of Maori protesters were in the position of struggling for the redress of their historic grievances, many also wanted to initiate dialogue concerning the distribution of power in New Zealand.

---

<sup>20</sup>Ibid.

<sup>21</sup>Ibid: 30

<sup>22</sup>Ibid.

<sup>23</sup>Kelsey, 1996: 179

<sup>24</sup>Renwick, 1993: 30

<sup>25</sup>Exactly who and what constitutes the Crown is discussed at length in Appendix 5. Briefly, however, the Crown is a term used to describe the combination of the three major institutions of government - the legislature, the executive and the judiciary.

Since the 1970s, in response to Maori calls for change, government policies on Maori and Treaty issues have gradually reacted. These accumulated reactions are pessimistically characterised by Kelsey as 'a continuum moving from naive paternalism to ad hoc crisis control to cynical strategies driven by short-term political goals.'<sup>26</sup> Optimistically, however, Renwick would rather think of past Maori and Treaty policy as cautious, piecemeal attempts at 'rehabilitating' the Treaty, denoting New Zealand's 'bicultural progress.'<sup>27</sup>

Government policy significant to broaching the issue of indigenous rights was the Treaty of Waitangi Act (1975). This policy conceded to address historic grievances in relation to resource claims, but did not go as far as to open discussions between Maori and the Crown on the distribution of state power and authority. For the Crown, there was little or no political will existing at the time for such a dialogue.

The Treaty of Waitangi Act set up the Waitangi Tribunal, a bicultural body empowered to investigate Maori grievances under the Treaty with regards to Crown action or inaction, as the case may be. Maori now had a forum in which to seek formal redress for resource claims against the Crown. Renwick states that this act gave 'a small opening to the future', where there is the growing potential for tino rangatiratanga to be addressed not only in relation to tribal resources, but also political power.<sup>28</sup> Detractors of this policy have questioned the efficacy a Crown created tribunal could have and saw it as merely 'pivotal to the appeasement process' of the government.<sup>29</sup>

---

<sup>26</sup>Kelsey, 1996: 179

<sup>27</sup>Renwick, 1993: 31

<sup>28</sup>Ibid: 32

<sup>29</sup>Kelsey, 1996: 183

The act promised much but so far has delivered mixed results as it struggles with imposed limitations. Rather than enacting the Treaty itself, the act maintained the Crown should perform consistently with its principles as determined by the Tribunal. Kelsey argues that, throughout the Tribunal's lifetime, members have often been appointed for 'political reasons rather than genuine expertise.'<sup>30</sup> If this is the case, politically motivated agendas may have had an undue influence within the tribunal at the expense of cases receiving a full and fair hearing.

Another limitation was that initially, only Crown infringements of the Treaty occurring *after* October 10 1975 could be investigated. The bulk of Maori grievances against the Crown derived from the nineteenth century. Furthermore, the tribunal had no powers of enforcement. It could only recommend the appropriate actions for the Crown to take to resolve a case, which in turn could be accepted or rejected by the Crown.

Ten years later, in 1985, Maori protest activity reached 'unprecedented levels.'<sup>31</sup> In response to this, and as part of the Labour Party's re-election manifesto, the Treaty of Waitangi Act was amended to increase the Tribunal's jurisdiction retrospectively to 1840. This enabled large claims by Ngai Tahu, Waikato and Taranaki iwi to be lodged and eventually heard by the Tribunal. However, a chronic lack of funds from the time of the Tribunal's implementation meant that this measure swamped an already increasing backlog of claims. By 1987 the backlog was approaching 200.<sup>32</sup>

For the claims that have been heard by the Tribunal, its recommendations have formed the backbone of negotiations between iwi and the Crown for a

---

<sup>30</sup>Ibid.

<sup>31</sup>Renwick, 1993: 35

<sup>32</sup>Kelsey, 1996: 183

settlement of historical grievances over resources held by Maori. Such recommendations, the Tribunal claims, adheres to the Treaty's intent 'to harmonise the interests of two people of different cultures in a new enterprise.'<sup>33</sup> Thus, the Tribunal's recognition of the interface between tino rangatiratanga and sovereignty works within the context of resolving grievances over resources and not over direct state power.

In 1987 the Court of Appeal pushed the parameters for the recognition of tino rangatiratanga in a landmark case known as the *New Zealand Maori Council v Attorney-General*. In this case the Court of Appeal confirmed that 'the Treaty is to be read as a solemn compact signifying a partnership between races.'<sup>34</sup> This hinted at an evolving partnership between Maori and the Crown not only in terms of resource distribution, but power distribution.

### **Tino Rangatiratanga and the New Zealand Nation-State:**

Undoubtedly, then, there is a growing acceptance by state institutions that Maori are not just a disadvantaged minority with outstanding historical grievances but partners in New Zealand's development as a nation-state. In turn, with the courts articulating the principle of partnership, there is a gradual acceptance from the public at large that Maori are in contract with the Crown on Treaty issues.<sup>35</sup> Therefore, the Crown and Maori must find constructive solutions not only to Maori resource claims, but to the negotiation of the role of partners in a nation. Constructive solutions means bringing rangatiratanga out of the realms of ideological discourse and into practice.

One solution arrived at in 1992 was the Sealord Deal, which was formalised in the Treaty of Waitangi (Fisheries Claims) Settlement Act (1992). It was a unique

---

<sup>33</sup>Renwick, 1993: 35

<sup>34</sup>Ibid: 38

<sup>35</sup>Ibid: 39



settlement in that these negotiations were pan-Maori and resolved to end fully and finally multi-tribal fisheries claims.<sup>36</sup> Some would argue, however, that this 'unique' aspect of the settlement was its flaw, whereby the government purposefully, in a 'divide and rule' measure, redirected the 'discussion of tino rangatiratanga away from the issue of Maori control over the fisheries resource, and instead to a potentially bitter inter-iwi struggle for a share of the Crown-defined Maori share of the resource.'<sup>37</sup> Furthermore, a full and final settlement would relinquish the Crown once and for all from entering lengthy, not to mention expensive, Treaty negotiations over fisheries with Maori.

The deal involved a government-financed purchase of half of a privately owned fishing company known as Sealord Products Ltd. on behalf of Maori. Along with partnership in New Zealand's largest fishing company, the Settlement Act 'gave Maori interests control over 23% of the national offshore fisheries, a substantial asset consisting of 57,000 tonnes of fish quota and 30 million in cash.'<sup>38</sup> Furthermore, it resolved to settle tribal fisheries claims fully and finally. This asset is currently managed by the Treaty of Waitangi Fisheries Commission (Te Ohu Kaimoana - TOKM) until an allocation system has been decided upon.

In developing an allocation system, iwi and Urban Maori Authorities (UMAs) have illustrated differing and conflicting interpretations of tino rangatiratanga.<sup>39</sup> Coastal tribes have argued for assets to be allocated in proportion to the amount of coastline contained within their traditional rohe, or territory. Proponents have argued that this view is consistent with Treaty guarantees of tino rangatiratanga over tribal property.<sup>40</sup> Inland tribes have argued for an allocation system according to modern tribal populations, in an adaptation of tino rangatiratanga

---

<sup>36</sup>Fleras and Maaka, 1997: 10

<sup>37</sup>Kelsey, 1996: 193

<sup>38</sup>Fleras and Maaka, 1997: 10

<sup>39</sup>Ibid.

<sup>40</sup>O'Regan, 1994: 50

not necessarily dependent on the Treaty. Adding a further dimension to this debate are the UMAs in Christchurch, Wellington and Auckland. They represent a percentage of the urban Maori population who can not, or do not, wish to affiliate to an iwi. The UMAs claim a proportion of the settlement assets by right of the populations they represent.

By 1996 the negotiations for an allocation system had become deadlocked. With the government's threat of imposing a solution, in 1997, the TOKM announced a 60% coastline and 40% population system of allocation. However, with court appeals looming from at least one iwi and the UMAs, the fisheries settlement is still far from being fully and finally resolved. As Fleras and Maaka suggest, 'the fisheries debate illustrates that tino rangatiratanga is contestable and is being redefined internally according to Maori social circumstances.'<sup>41</sup> Tino rangatiratanga, in terms of its tribal expression, is capable of being evolved.

Other solutions worked on individually between iwi and the Crown have been settlements of Treaty claims relating to land and its intendant resources. This thesis is devoted entirely to Ngai Tahu's progress in negotiating such a settlement, its likely form and the internal problems arising from it.

For Ngai Tahu, an impending settlement with the Crown has not only involved substantial redress for economic loss but also the acknowledgment and affirmation of Ngai Tahu's 'mana as a people, and...mana over the landscape and resources of Te Waipounamu.'<sup>42</sup> This cultural redress, in brief, involves co-management initiatives with the Crown over natural resources significant to the tribe, and enhanced access to mahinga kai resources.<sup>43</sup>

---

<sup>41</sup>Fleras and Maaka, 1997: 10

<sup>42</sup>O'Regan, 1997: 6; Te Waipounamu is Ngai Tahu's traditional rohe, or territory, and includes the majority of the South Island from Kahurangi Point to Rotaroa to Te Parinuiowhiti.

<sup>43</sup>Mahinga kai areas are traditional sites for food production and procurement. Chapter 6 gives an overview of the Heads of Agreement which sets out the principles agreed to between Ngai

However, a key element to not only Ngai Tahu's, but other iwi settlements has been the enhancement of economic resources as part of the Crown's compensation for breaches of the Treaty, and land sale contracts in the last century. The motive behind this measure is that an economic base can be developed and grown, both benefiting the people of the iwi and increasing iwi involvement in the economy. Thus, tino rangatiratanga, in terms of Crown settlement packages, is translated into the enhancement of the economic sovereignty of an iwi. As Oliver points out, the gaining of economic resources is desirable for iwi in so far as it 'is a way for getting into a position to bid for a share of political power - anyone who has muscle within the economy will enjoy, even if informally, a share of power within state institutions.'<sup>44</sup> From economic sovereignty, then, comes the development of informal iwi political power and, internally, the development of its people both socially and culturally.

### **Tino Rangatiratanga and Sovereignty - The Interface:**

Therefore, Crown settlements work within the context of recognising rangatiratanga rights in market terms, and within the status quo of New Zealand's already established state institutions. As referred to above, iwi acceptance of Crown settlement packages gives an example of the adherence to a conservative agenda. The conservative agenda receives support not only from the iwi concerned, but the Crown. Out of the three agendas mentioned above, this is the only one that receives Crown support. One reason for this is that the status quo is preserved by a conservative agenda. Calls for the Crown to more comprehensively, and formally, address rangatiratanga rights within the machinery of the state are deflected. The Hobbesian notion of absolute and indivisible sovereignty of the Crown remains unscathed.<sup>45</sup> A liberal agenda, on

---

Tahu and the Crown for the impending settlement.

<sup>44</sup> Oliver, 1995: 19

<sup>45</sup> Appendix 5 elaborates on the Hobbesian notion of sovereignty

the other hand, proposes reform of the established norms surrounding Crown sovereignty making it divisible. A radical agenda calls for a complete change of sovereigns.

Yet to come into prominence in the Maori/Crown relationship is a discourse on the reform of the surrounding circumstances, or colonialist arrangements, whence the power and authority within New Zealand state institutions derive. State institutions have remained largely unaffected by the principle of partnership inherent in the Treaty, although Crown settlement packages for iwi do make some headway towards Treaty partnership values and power-sharing, however meagre. As pointed out above, components of iwi settlements, for Ngai Tahu at least, involve co-management initiatives in areas of 'high historical, cultural and conservation value' such as Whenua Hou (Codfish Island) and the Crown Titi Islands.<sup>46</sup> Optimistically, such measures may be a positive beginning for future state reforms on a grander scale.

Currently, in state institutions that wield supreme power in New Zealand, such as parliament, power-sharing still remains unrecognised. Some regard such measures to be faulty. For example, with equal power-sharing in parliament, Sharp asserts that electorally a Maori vote would be approximately ten times more valuable than a Pakeha vote as Maori are a minority population.<sup>47</sup> Others point to the converse, where the Pakeha majority in New Zealand continue to prevail at the expense of its Treaty partners. This highlights the 'inherent flaw in democracy identified a century ago by Alexis de Tocqueville as the 'tyranny of the majority.'<sup>48</sup> Constitutional reform, such as the entrenchment of the Treaty as discussed in Appendix 5, is still to be fully explored.

---

<sup>46</sup>O'Regan, 1997: 7; Both islands mentioned, but primarily the Crown Titi, were significant in Ngai Tahu's traditional economy for the seasonal harvest of titi or muttonbirds.

<sup>47</sup>Sharp, 1990: 234

<sup>48</sup>Walker, 1996: 75

It is highlighted by Fleras and Maaka that white settler dominions such as New Zealand, Australia and Canada 'remain suspicious of any fundamental restructuring, preferring instead to...[recognise indigenous rights and tino rangatiratanga] through capitalist penetration' such as with settlement packages.<sup>49</sup> Such suspicion stems from the notion of 'universal rights rather than the recognition of...indigenous rights', where all are equal before the law.<sup>50</sup> This is the prevailing view amongst many, particularly Pakeha, New Zealanders.<sup>51</sup> However, there is a gradual shift away from this position, rethinking the rights of Pakeha and Maori New Zealanders as illustrated by the Minister of Treaty Negotiations and Justice, Doug Graham. He recently differentiated between the rights of Pakeha and Maori in a bold statement claiming Maori 'have certain customary rights which have not been extinguished. We [non-Maori] don't have them.'<sup>52</sup> This may seem like political suicide in a nation which in the past, at least, has fiercely clung to the notion of egalitarianism amongst all New Zealanders. However, if such a statement has a bearing on the future of New Zealand, there is still room for the continued negotiation of tino rangatiratanga, the rights it imparts to the indigenous population and its integral and evolving role in the nation's development.

---

<sup>49</sup>Fleras and Maaka, 1997: 11

<sup>50</sup>Ibid.

<sup>51</sup>Renwick, 1993: 40

<sup>52</sup>Fleras and Maaka, 1997: 6 quoting from the New Zealand Herald May 31 1997.

## **CHAPTER THREE**

**The Loss of land and Ngai Tahu Rangatiratanga**

The following chapter illustrates the nineteenth century's Crown land purchases from the Ngai Tahu and the successive whittling away of Ngai Tahu manawhenua, an integral part of rangatiratanga.<sup>1</sup> The objective of this chapter is to provide a brief history which discusses how Ngai Tahu's tino rangatiratanga, which imparts powers of self-determination, was destroyed. Knowing this part of Ngai Tahu's history provides the necessary understanding as to why throughout the twentieth century they have been continually struggling for the redress of these historic grievances. This chapter also gives a metaphorical springboard into the rest of this thesis. Through discussing Ngai Tahu's losses we are prepared to explore how Ngai Tahu have reorganised themselves in a bid to restore self-determination and, thus, enhance their capabilities of achieving tino rangatiratanga.

### **The Motives:**

Ngai Tahu's tribal rohe, subject to the Crown land purchases, covered the greater part of Te Waipounamu, or the South Island, and stretched from Kahurangi Point, near Nelson, and to Rotoroa and then Te Parinuiowhiti (White Bluffs) on the east coast.<sup>2</sup> Above this boundary line are the customary tribal lands of iwi from the Nelson, Marlborough areas and the North Island. These iwi are Rangitane, Ngati Rarua, Ngati Koata, Ngati Tama, Ngati Maru and Ngati Toa.<sup>3</sup>

Motivations to purchase Ngai Tahu lands included the objective of the Crown to finance the fledgling New Zealand economy through the monopoly on the sale of land to British settlers. The New Zealand Land Claims Act (1841) established this objective. This act articulated a pre-emptive clause as used in the Treaty of

---

<sup>1</sup>Manawhenua is the customary right of ownership, and thus authority, of a hapu or iwi to a certain area of land.

<sup>2</sup>Evison, 1993: 490

<sup>3</sup>O'Regan, 1989: 240

Waitangi. Solely the Crown could purchase land from the Maori. The act also required that all 'unappropriated lands' in New Zealand now become Crown domain lands to be disposed of at the Crown's discretion. Here the use of the waste lands principle was applied by the Crown whereby all land that was not cultivated by the Maori was regarded as unappropriated land, and thus waste land. This impacted on Ngai Tahu hapu severely as for centuries mahinga kai, or places of food production and procurement, and kai nohoanga, seasonal camps for food gathering, had been relied on for food resources. These food sources were in areas not necessarily cultivated. Hence, Crown law demanded that this land be appropriated. In Kaikoura, via the Crown Waste Lands Regulations of 1853 Crown 'waste land' was sold to European settlers for ten shillings an acre.<sup>4</sup>

Thus, Maori ownership of their land was taken through legislation. Maori rights to the land still existed, however, by virtue of the doctrine of aboriginal title (customary indigenous rights), but these rights could be extinguished by a formal land purchase deed.<sup>5</sup> This is what occurred in the ten purchases in Te Waipounamu of Ngai Tahu land.

As we shall see in the following discussion, land was purchased from Ngai Tahu for, as Governor Grey maintained, a 'trifling consideration', in other words, for a pittance.<sup>6</sup> Reasons given were threefold. First, the Government and the New Zealand Company's token prices paid for Maori land were justified because the reserves made for the Maori population would greatly increase in capital value

---

<sup>4</sup>Evison, 1993: 353

<sup>5</sup>The doctrine of aboriginal title is a commonlaw notion whereby the sovereign is 'technically the ultimate owner of all land in its territory, but that ownership is subject to indigenous title' (Parsonson, 1992: 193). Indigenous title can be extinguished only by the free consent of, in Te Waipounamu's case, the Ngai Tahu. For Ngai Tahu, their *free* consent relied on the provision of adequate resources for the support of present and future generations. However, Ngai Tahu consent was oftentimes subject to Crown fraud and blackmail.

<sup>6</sup>Evison, 1993: 254



once settlers arrived and competed for land. Second, all land, when applying the doctrine of aboriginal title, was already legally the Crown's, so land 'purchases' were not really purchases as such but only compensation. Hence, this gave a discretionary element to Crown land deals with Ngai Tahu and the justification for keeping compensation payments low. Third, Maori would be compensated, not through money, but through the benefits of 'civilisation' brought to them by the Crown and settlers through the purchase of their land. Civilising Maori included Christian education and use as wage labour. This 'civilising' process of the Maori was to be funded partly by the sale of their lands.

For Ngai Tahu hapu, key motivating factors for the participation in land sales with the Crown was primarily a chance to consolidate manawhenua, and thus, enhance their rangatiratanga over their takiwa, or district, from external threat posed by Ngati Toa and Pakeha squatters. Another consideration was that, via land sales, the opportunity arose for Ngai Tahu to participate in the new market economy. Trade would be possible with Pakeha settlements in the Ngai Tahu rohe as well as land sale capital used for investment in farming.

### **The Purchases:**

The 1844 Otago Purchase was the first purchase of Ngai Tahu land. Here motivations for Otakou Ngai Tahu selling parts of their land were the new commercial opportunities a New Zealand Company Settlement in their takiwa would offer, and the formal recognition, and thus, safeguard of their manawhenua. Te Rauparaha's threat to their manawhenua was still being felt. Approximately 162,000 hectares (Ha) were purchased for a token payment of £2400 on the pretext that the Otakou Ngai Tahu would be reserved every tenth section surveyed of both rural and urban land. Promises of 'Tenths' were agreed to 'orally...but did not appear on the written Otago Deed of Purchase.'<sup>7</sup> When

---

<sup>7</sup>O'Regan, 1989: 247

the New Zealand Company referred the matter of 'Tenths' to the Government, no action was ever taken. Otakou Ngai Tahu not only lost access mahinga kai, but also manawhenua within their takiwa.

The second purchase of Ngai Tahu land by the Crown was Kemp's Purchase in 1848. Reasons motivating this sale were first, the chance to formally assert Ngai Tuahuriri manawhenua which had been 'usurped on paper' by Ngati Toa via the Wairau Deed of 1847. This deed sold Ngai Tahu land as far south as Akaroa to the Crown for £3000. As stated by O'Regan, Ngati Toa had been driven from the Ngai Tahu rohe well before 1840 so did not have the mana, authority, to sell the land. Ahi Kaa, or land occupation, whereby constant occupation for a substantial amount of time is required by one to forfeit another's right to the land, had not been achieved by Ngati Toa.<sup>8</sup> Second, Ngai Tuahuriri welcomed the possibility of having a Pakeha settlement in their takiwa with which to trade and capital to invest in farming.

Kemp's Purchase acquired for the Crown 1.3 millionHa of land for £2000.<sup>9</sup> As a result, boundary disputes with the Crown manifested. Ngai Tahu argued that Kemp's boundary 'comprised the lands stretching from the coast inland to the foothills along a line from Maukatere (Mount Grey) to Maukaatua (South of Dunedin).'<sup>10</sup> The Crown argued the boundary was from Kaiapoi Pa to the south of Dunedin and stretched to the West Coast. The Kaiapoi Reserve allotted to Ngai Tahu covered by Kemp's Purchase was about 100th the size of the reserve requested. The reserve lacked mahinga kai access. Manawhenua, and its customary entitlements, had to be abandoned.

---

<sup>8</sup>Ibid: 246

<sup>9</sup>Tau (1996) in *Te Karaka* maintains it was 20,000,000 acres (p10).

<sup>10</sup>O'Regan, 1989: 246

The North Canterbury Purchase of 1857, the Kaikoura Purchase of 1859, and the Banks Peninsula purchases at Akaroa, Port Cooper and Port Levy of 1845 and 1849, all had a common theme. Apart from the boundary disputes and inadequate reserves lacking mahinga kai access, they were subject to the Ngati Toa's 1847 Wairau Deed. As stated by O'Regan, Ngai Tahu regard all these purchases as 'forced sales' where the Crown employed the Wairau Deed as a source of blackmail to enforce its own terms.<sup>11</sup> During the land purchase negotiations Ngai Tahu hapu were evidently threatened with the non-recognition of their manawhenua within their takiwa.<sup>12</sup> This gave the Crown leverage for insisting upon meagre reserves, and in some cases none, as with the North Canterbury Purchase. The Crown also demanded Ngai Tahu accept little compensation.<sup>13</sup> Manawhenua was lost, not to Ngati Toa, but to the Crown.

Concerns for the Murihiku Ngai Tahu which lead to the Murihiku Purchase of 1853 was the invasion of Pakeha squatters within their takiwa.<sup>14</sup> A confirmation of Murihiku Ngai Tahu manawhenua was sought via a land purchase deed with the Crown. The outcome of this purchase was again, inadequate reserves and yet another boundary dispute. The key point, for Ngai Tahu, was that the Murihiku Purchase only extended as far south as the Waiau River. Thus, kept from the purchase was Te Whakatakanga o Te Karehu o Tamatea (Fiordland) in the western corner of the region. The Crown argued that Fiordland was included in the sale. O'Regan states Fiordland was and still is 'one of the cradles of Ngai Tahu mythology and tradition, and there is a deep resentment amongst Ngai Tahu at the regions 'cultural capture.'<sup>15</sup>

---

<sup>11</sup>Ibid.

<sup>12</sup>Ibid. Also discussed by at length Evison (1993).

<sup>13</sup>See Appendix 2 for a map summary of these and all other purchases of Ngai Tahu land.

<sup>14</sup>Evison, 1993: 349

<sup>15</sup>O'Regan, 1989: 245

The outcome of the Arahura Purchase had much in common with the other purchases. The Crown failed to set aside adequate reserves and there was a lack of mahinga kai access. The Poutini Ngai Tahu of the West Coast wanted to protect their mana over pounamu, or greenstone, from the Arahura River. This was agreed to with the Crown orally, but was not written into the deed of purchase. Hence Poutini Ngai Tahu's right to ownership over pounamu was later disputed by the Crown.

Apart from the above points of dispute, other grievances related to the 'unilateral imposition by the Crown of perpetual leasehold over Poutini land.'<sup>16</sup> Pakeha flooded into the West Coast in the 1860's, and on to Poutini lands, due to the discovery of gold. A motivation for Poutini Ngai Tahu signing the Arahura Purchase Deed was to secure their manawhenua over their land.<sup>17</sup> Poutini Ngai Tahu accommodated the influx of Pakeha by leasing their reserved land around Mawhera (Greymouth) to the new settlers. However, soon there was pressure from the lessees on the Government and local Maori to acquire the land freehold. In the 1870's this pressure succeeded. The Government passed a law which placed all 'land reserved from the 1860 purchase into trusteeship, and conveyed to the lessees the right to renew their leases in perpetuity - a form of "disguised" freehold.'<sup>18</sup> The law set the rent at an artificially low level. Thus, 'the Poutini Ngai Tahu were effectively landless, subsisting on hand-outs...whilst those around them, living on their lands, prospered.'<sup>19</sup>

The final purchase of Ngai Tahu land was the 1864 Stewart Island Purchase. Rakiura (Stewart Island) was an important mahinga kai resource for many Ngai Tahu as it was the nesting ground for titi or muttonbirds. The swelling Pakeha

---

<sup>16</sup>Ibid: 248

<sup>17</sup>Evison, 1993: 388

<sup>18</sup>O'Regan, 1989: 249

<sup>19</sup>Ibid.

population arriving at nearby areas, due to the discovery of gold, potentially threatened mahinga kai on Rakiura. In an effort to secure manawhenua on Rakiura, Murihiku Ngai Tahu entered into a purchase deed with the Crown. This deed was the only place in the Ngai Tahu rohe to reserve exclusive mahinga kai rights for Ngai Tahu.

### **The Loss of Rangatiratanga and Its Impact:**

The tino rangatiratanga of the hapu and rangatira over 'their lands, estates, forests, fisheries and other properties', as guaranteed by Article Two of the Treaty of Waitangi, seemed no more than pure deception for Ngai Tahu by the conclusion of the land purchases. The Crown land purchasers did not once refer to the guarantees made in the Treaty. Once the British had proclaimed sovereignty in 1840 it was absolute, all were bound by it and there was no question of it being qualified in any way by the Maori Treaty partner. The Treaty 'Principle of Partnership' which the Court of Appeal held to be 'at the heart of the Treaty' had no influence over Crown dealings with Ngai Tahu.<sup>20</sup>

The Crown showed that no guarantees solemnly made with the Maori were going to be heeded legally or morally. The purchase of Ngai Tahu land was simply a matter of accomplishing the Crown agenda of generating revenue and opening up Maori land to Pakeha settlement regardless of what the Ngai Tahu requested.

In all of the purchases an overriding theme motivating Ngai Tahu into land sale contracts were the preservation of hapu manawhenua within their takiwa. Recognition of manawhenua was to take place via the actual deed and the reserves requested. Rangatiratanga, or absolute authority in this context, over prized hapu resources, such as mahinga kai access, depended on this.

---

<sup>20</sup>Ibid: 246

However, the Crown's policy to reserve allocation was highlighted by Evison who stated that 'if reserves requested by Ngai Tahu were at places suitable for European settlement they were refused. If reserves wanted were too large they were reduced.'<sup>21</sup> In all land purchases not one reserve was either the size or situation requested by Ngai Tahu but inadequate Crown impositions instead. This destroyed manawhenua and to the largest extent put an end to Ngai Tahu rangatiratanga, including territorial and economic sovereignty. Furthermore, it was clearly inconsistent with the Treaty. Article Two's guarantee of Maori retaining possession over land they wished to keep was ignored. Instead the Crown employed a strategy whereby the entire title to an area of land was gained via the purchase contracts. Reserves could then be sectioned off at the Crown's discretion and to the detriment of Ngai Tahu.<sup>22</sup>

In some cases discussed, such as the Otago Purchase, Kemp's Purchase and Arahura Purchase, Ngai Tahu displayed a willingness to adapt aspects of their rangatiratanga to new economic opportunities offered by Pakeha settlements. Opportunities consisted of trade, farming and leasing property. However, after the Crown land purchases Ngai Tahu not only had an inadequate amount of land for survival, but they were also devoid of capital. Token prices paid for vast tracts of land ensured this. This precluded Ngai Tahu from taking advantage of any economic opportunities.

Therefore, as a result of the Crown land purchases, Ngai Tahu without access to traditional food resources and land and capital for involvement in the burgeoning economy, were pushed into marginalisation and poverty in New Zealand society. Tino rangatiratanga, over individual, over hapu, and thus, over iwi future destiny was severely impaired.

---

<sup>21</sup>Evison, 1993: 349

<sup>22</sup>O'Regan, 1989: 246

## **CHAPTER FOUR**

**Te Runanga o Ngai Tahu Act (1996) and its Significance to Ngai Tahu's Tino Rangatiratanga**

The following chapter discusses the significance of the Te Runanga o Ngai Tahu Act (1996) on Ngai Tahu's tino rangatiratanga. It begins with a brief overview of the Crown's nineteenth century efforts that removed Ngai Tahu's legal identity as a Treaty partner. This continued on from the fraudulent Crown land purchases outlined in Chapter Two. The suppression of Ngai Tahu's legal identity carried through to the twentieth century with the imposition of the Crown created Ngai Tahu Maori Trust Board. The rebuilding of tribal self-determination was denied by this structure's existence. In 1992 Ngai Tahu introduced a private members bill, the Te Runanga o Ngai Tahu Bill, into parliament which proposed the establishment of a runanga-based authority and a tribally determined organisational structure. This structure gave back to Ngai Tahu a legal identity, accountability to its own people, the power of self-determination and the potential to capture tribal tino rangatiratanga.

### **The Delegalisation of Ngai Tahu:**

Last century, the dominant thought in New Zealand with the arrival of Christian Missionaries in 1840 was to 'discourage tribal activity in favour of individualism.'<sup>1</sup> Most fervent in imparting their belief in the virtues of individual industry to Maori were the Protestant missionaries. For Ngai Tahu, a veritable tidal wave of missionaries had arrived within their rohe: the Wesleyan's Watkin and Creed at Waikouaiti, the Lutheran Wohlers at Ruapuke and the Anglican Stack at Kaiapoi.<sup>2</sup> These missionaries preached an ideology which focused on the virtues of a social system governed by individualism as opposed to communalism which was present in Maori society. The missionaries argued that individualism is necessary to adopt in order to progress from 'savagery' to 'civilisation' and henceforth to salvation.<sup>3</sup>

---

<sup>1</sup>Evison, 1987: 58

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.



During the 1850's, as the inadequacy of reserves allocated by the Crown to sustain Ngai Tahu livelihoods became evident, the missionaries were quick to blame the so-called inefficiencies deriving from 'native communism'.<sup>4</sup> Ngai Tahu, now suffering from poverty manifesting from inadequate reserve sizes, were susceptible to such missionary influence. The Kaiapoi Reserve created out of Kemp's Purchase by Walter Mantell was partitioned into individual holdings in 1860 by Walter Buller, the Commissioner for Native Reserves. Buller was the son of a Wesleyan Missionary.

With the individualisation of land at Kaiapoi, traditional concepts of land ownership such as *manawhenua*, the customary right of ownership to an area of land, had to be abandoned. Various reasons for Ngai Tahu's acceptance of land individualisation are offered. Te Maire Tau, Director of Ngai Tahu Research Centre, points out that the Waitangi Tribunal argued that land individualisation was consented to by Ngai Tahu, implying that Ngai Tahu simply opted for a superior alternative of land management. T.M. Tau, however, maintains that this observation is 'superficial when one considers that the Crown's failure to set aside enough land for Ngai Tahu meant that individualization was the only real economic option available.'<sup>5</sup> Furthermore, because the Kaiapoi Reserve was so small to begin with, many individuals went without private holdings. Those with private holdings often found that they were too small to adequately support themselves on anyway. Thus, many Maori holdings were turned over to European leaseholders.<sup>6</sup>

Buller's scheme to individualise land in the Kaiapoi Reserve was a successful experiment from the Crown's perspective, whose agenda included freeing up as much Maori land as possible for European settlement. Buller's scheme led the

---

<sup>4</sup>Ibid.

<sup>5</sup>T.M. Tau, 1992: 319

<sup>6</sup>Evison, 1987: 58

way for formal legislation to individualise Maori reserve land. Legislation throughout the latter half of the nineteenth century not only reflected missionary attitudes and the Crown agenda of land acquisition but also had assimilationist goals. The best example of this was the Native Land Act (1865). This Act was the second amendment in a series of further amendments to this Act, which led it to be 'confusing and sometimes conflicting legislation.'<sup>7</sup> It helped to whittle away, not only Ngai Tahu, but other tribes' existence as a legal entity which derived from the Treaty of Waitangi partnership. The objectives of the Native Land Act (1865) are commented on by Henry Sewell, the Attorney-General at the time and the Minister of Justice in 1870. An oft quoted extract, provides a fine example of colonialist ethnocentrism:

The object of the Native Land Act was two-fold: to bring the great bulk of the lands of the Northern Island which belonged to the natives, and which before the passing of the Act, were *extra commercium* [beyond the bonds of commerce] - except through the means of the old purchase system, which had entirely broken down, within the reach of colonization. The other great object was the detribalization of the Natives - to destroy, if it were possible, the principle of communism which ran through the whole of their institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Native race into our own social and political system. It was hoped by the individualization of titles to land, giving them individual ownership which we ourselves possessed, they would lose their communistic character, and that their social status would become assimilated to our own.<sup>8</sup>

---

<sup>7</sup>Ibid.

<sup>8</sup>Hist. 624 Reading/NZPD, 1870: 254

Under this Act, pakeha judges of a Native Land Court were appointed to decide on the legal title of all claimants to land. Legal title could be granted to only ten claimants according to their customary usage of the land area. They were the sole legal owners of the land and could dispose of it how they saw fit.<sup>9</sup> As an outcome of this policy, many rightful owners were dispossessed.<sup>10</sup>

For Ngai Tahu, as a Treaty partner, the primary contract within the Treaty was that 'Ngai Tahu is bound...to recognise the Crown's sovereignty, and the Crown is bound to recognise and protect Ngai Tahu tino rangatiratanga.'<sup>11</sup> In that acts such as the Native Land Act (1865) were designed by Parliament and consented to by the Crown with the object of smashing not only Ngai Tahu, but Maori ways of life in general, the Crown 'deliberately subverted Ngai Tahu rangatiratanga...and specifically intended to do so.'<sup>12</sup>

### **The Establishment of the Ngai Tahu Maori Trust Board:**

From as early as the 1840's Ngai Tahu petitioned the Crown over their grievances regarding the Crown land purchases. These grievances collectively became known as Te Kereeme, or The Claim. T.M. Tau comments on how The Claim, and the struggle for an eventual settlement, became like the 'Holy Grail' for Ngai Tahu.<sup>13</sup> The Claim functioned as a vehicle to unite the tribe in a common cause.<sup>14</sup>

In 1921 a Royal Commission was appointed to investigate Kemp's Purchase. It concluded that reserves awarded by Mantell were in fact inadequate as were

---

<sup>9</sup>Evison, 1987: 59

<sup>10</sup>Ibid.

<sup>11</sup>O'Regan, 1991: 270

<sup>12</sup>Ibid.

<sup>13</sup>T.M. Tau, 1992: 346

<sup>14</sup>Ibid.

the Land Court proceedings awarding private holdings to selected owners. It was recommended that Ngai Tahu receive £354,000 as compensation. However, for twenty years following the Royal Commission's recommendations, 'despite diligent lobbying and petitioning, the Ngai Tahu Claim made no headway.'<sup>15</sup> Evison remarks that at the time, just after World War One, the Crown and much of New Zealand society was far too preoccupied with the virtues of being part of the British Empire to take Maori claims seriously.<sup>16</sup>

The first Labour Government made the first concession to the Ngai Tahu Claim in 1944. A revisitation of the 1921 Royal Commission Report produced the Ngai Tahu Claim Settlement Act (1944). This act purported to release the Crown from 'any claims or demands which hereafter be made on it in respect of, or arising out of, the purchase of certain lands in the South Island belonging to the Ngai Tahu tribe.'<sup>17</sup>

In order to achieve 'round figures', the Crown adjusted the Royal Commission's recommendation of compensation down from £354,000 to £300, 000.<sup>18</sup> £10, 000 or \$20,000 was to be paid to Ngai Tahu each year for thirty years. The Settlement Act made no mention of the Treaty of Waitangi and its intendant rights and obligations for both Ngai Tahu and the Crown with regard to the ten deeds of purchase.<sup>19</sup> According to Evison and T.M. Tau, the Settlement Act was decided upon unilaterally by the government without seeking the prior agreement of Ngai Tahu. Furthermore, even the parliamentary representative for Southern Maori, Eruera Tirikatene, was not consulted. In the 1996 Heads of Agreement (see Chapter 6), which layed down principles agreed to in negotiation for a settlement between the Crown and Ngai Tahu, it was conceded

---

<sup>15</sup>Evison, 1993: 485

<sup>16</sup>Ibid: 483

<sup>17</sup>T.M. Tau, 1992: 399

<sup>18</sup>Evison, 1993: 486

<sup>19</sup>Ibid.

that 'the Crown accepts Ngai Tahu grievances were not remedied. In particular, the Ngaitahu Claim Settlement Act 1944 was enacted without prior consultation with the tribe.'<sup>20</sup>

Amongst Ngai Tahu there was a general acceptance of the Settlement Act on the grounds that "something is better than nothing", or, as Evison points out, "half a loaf is better than none."<sup>21</sup> There was, however, opposition to this Act. T.M. Tau states that Ngai Tuahuriri Runanga passed a resolution in 1945 opposing the act and maintaining that the compensation amount was inadequate and that there was no prior consultation by the government.<sup>22</sup>

By the time the Settlement Act expired - in 1974 - the third Labour Government converted the \$20,000 into a perpetual payment. However, by this time 'its value had been reduced by inflation whilst the land it represented had been increasing in value.'<sup>23</sup>

From the Ngai Tahu Claim Settlement Act sprang a further act pertaining to Ngai Tahu, the Ngai Tahu Trust Board Act (1946). Through the passing of this act, the Ngai Tahu Trust Board became the vehicle authorised by the Crown to administer the funds deriving from the Settlement Act in the interests of Ngai Tahu beneficiaries.

The Crown notion of Trust Boards came from the Maori Social and Economic Advancement Act (1945), which legalised tribal executives allowing for Maori to have extremely limited powers of local government within their iwi.<sup>24</sup> The Ngai

---

<sup>20</sup>Heads of Agreement, 1996: 4

<sup>21</sup>T. M Tau, 1992: 401 quoting Marewa McConnel of Rapaki. Evison, 1993: 487 quoting W.D. Barrett of Tuahiwi, 1948.

<sup>22</sup>T.M. Tau, 1992: 400

<sup>23</sup>O'Regan, 1989: 259

<sup>24</sup>Kelly, 1991: 32

Tahu Trust Board was elected by beneficiaries, thus becoming the statutory representative of the iwi even though the Crown had brought it into existence. The Ngai Tahu Trust Board can be characterised as the Crown's paternalistic attempt to 'appease the Maori leadership and the wider Maori population without having to make complete compensation.'<sup>25</sup>

In 1955 the Ngai Tahu Trust Board Act (1946) was repealed. In its place was yet another Crown creation, the Maori Trust Boards Act (1955). This act, rather than being specifically aimed at Ngai Tahu, incorporated other tribes into a Trust Board structure. The Ngai Tahu Trust Board became the Ngai Tahu Maori Trust Board. Again, elected by beneficiaries to be representative of Ngai Tahu. After delegating Ngai Tahu and other Maori Treaty partners via legislation in the nineteenth century, Trust Boards can be seen as a Crown convenience where Crown entities are created 'which might in some circumstances and for some purposes, be said to be representative of Ngai Tahu and those other tribes in their dealings with the Crown.'<sup>26</sup> Through the existence of Trust Boards, the Crown does not have to forfeit the ultimate say in Maori affairs with regards to each iwi. Maori tino rangatiratanga over their assets as guaranteed by the Treaty is still denied by this structure.

Eight Ngai Tahu Maori Trust Board members were elected to represent various districts throughout the Ngai Tahu rohe. The districts and their Trust Board representatives for the final 1996 year were: Te Ika a Maui (representative of beneficiaries who reside outside the Ngai Tahu rohe) - Sir Tipene O'Regan (Chairman); Mahaanui (Kaiapoi and North Canterbury) - Henare Rakiihia Tau (Deputy Chairman); Akaroa (Banks Peninsula and Christchurch) - Monty Daniels; Kaikoura (Marlborough and Nelson) - Wiremu Te Haere Solomon; Te

---

<sup>25</sup>Kelly, 1991: 33

<sup>26</sup>O'Regan, 1989: 259

Tai Poutini (West Coast) - Maire Antoinette Forsyth; Arowhenua (Timaru, Ashburton and North Otago) - Elizabeth Anne Stevenson; Araiteuru (Otago) - Kuao Edmond Langsbury; and Murihiku (Southland) - Jane Ruby Davis.<sup>27</sup>

Since 1955, when the Ngai Tahu Maori Trust Board was legislated into existence, its functions were considerably extended by the tribe to do more than merely administer the yearly \$20,000 payment. A permissive clause in the Maori Trust Boards Act enabled Ngai Tahu to 'undertake actions they consider to be in the interests of beneficiaries as a whole.'<sup>28</sup> The Trust Board exploited this loophole to its fullest potential, investing in tribally owned and subsidiary companies in the areas of property, fishing, tourism, trade and marketing. These investments formed the primary source of income for the tribe.

Below is a hierarchical diagram of Ngai Tahu's organisational structure during the majority of the forty years the Trust Board structure was in place. The point of this diagram is to show that within the hierarchy the Crown is the dominant party to which the Trust Board was legally accountable and not the Ngai Tahu Whanui which includes the Papatipu Runanga.<sup>29</sup>

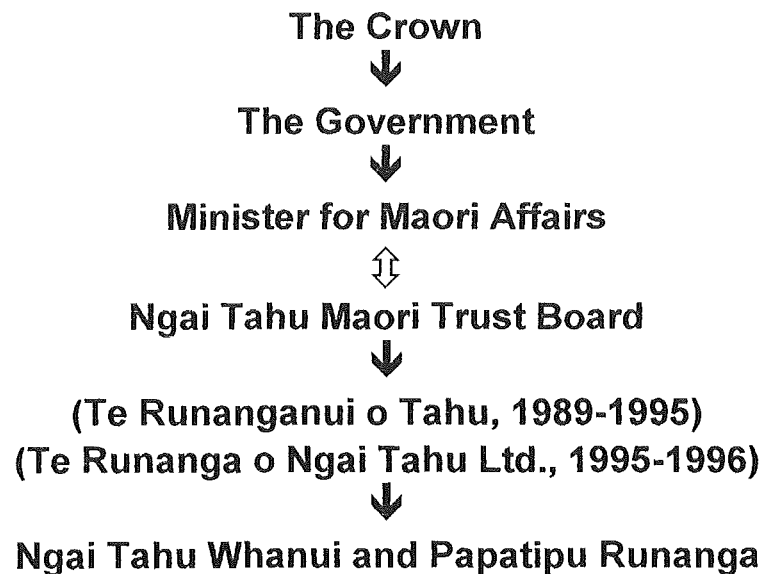
---

<sup>27</sup>Ngai Tahu Maori Trust Board Annual Report, 1995: 47

<sup>28</sup>Ibid.

<sup>29</sup>Papatipu Runanga are the traditional marae-based councils of Ngai Tahu.

**Figure 1. The Structure of Legally Recognised Authority as it Pertained to the Ngai Tahu Maori Trust Board, 1955-1996:**



**Note:** The two-way arrow denotes the Trust Board's accountability back to the Minister for Maori Affairs rather than to the Ngai Tahu Whanui.

### **The Establishment of Ngai Tahu's Legal Identity:**

It was argued by the Hon. Mrs Whetu Tirikatene-Sullivan, representative for Southern Maori and a Ngai Tahu descendant, during the Third Reading of the Te Runanga o Ngai Tahu Bill that 'the legal identity of Ngai Tahu was established in 1944 and 1946.'<sup>30</sup> Thus, Tirikatene-Sullivan negated the primary reason for Ngai Tahu wishing to formulate legislation to incorporate structures which lay at the core of their legal identity as a tribe, such as the Papatipu Runanga. Many would argue, as borne out by the passing of the Te Runanga o Ngai Tahu legislation, that the Ngai Tahu Claim Settlement Act (1944), the Ngai Tahu Trust Board Act (1946) and the subsequent Maori Trust Boards Act (1955) did not establish a legal identity for Ngai Tahu. The identity that was established

---

<sup>30</sup>Tirikatene-Sullivan, 1996: 11950



by these was an artificial identity, being Crown created, for Crown purposes and not Ngai Tahu's. All of these acts were merely Crown impositions.

The following discussion of the Ngai Tahu Maori Trust Board highlights the short-comings of this organisational structure and illustrates Ngai Tahu's desire for one which they alone create. The discussion then moves on to Ngai Tahu's shift away from the Trust Board structure towards the crafting of their own organisational structure by way of the Te Runanga o Ngai Tahu Act (1996), which finally imparts a legal identity to Ngai Tahu.

One Ngai Tahu objection to the Trust Board structure was that it was legally accountable to the Crown rather than the Papatipu Runanga of Ngai Tahu, who are recognised as 'the representative heart of Ngai Tahu history and culture'<sup>31</sup> and where 'the tino rangatiratanga of Ngai Tahu resides.'<sup>32</sup> Accountability to the Minister of Maori Affairs, and thus to the Crown, was 'based on the belief that moneys paid in compensation to Ngai Tahu are public moneys and therefore should be subject to Government audit and Ministerial control.'<sup>33</sup> This Ministerial control was so tight that the Trust Board was unable to spend \$200 without the Minister's approval.<sup>34</sup> The Ngai Tahu Maori Trust Board operated along government departmental lines rather than being a structure which truly represented the iwi and its people.

Moneys other than compensatory money, that is, deriving from investments may not have been subject to the \$200 limitation or government audit procedures. However, as stated by O'Regan, the Trust Board was still 'limited in the range of

---

<sup>31</sup>O'Regan, 1991: 271

<sup>32</sup>Te Kawenata o Ngai Tahu/Draft Charter, 1993

<sup>33</sup>O'Regan, 1989: 260

<sup>34</sup>Huria, 1996: 4

independent enterprise it could engage in and ringed with restrictions imposed by past paternalistic Governments.<sup>35</sup>

Thus, within the Trust Board structure there was the belief that, not only should the tribe determine its management structure, but this structure 'should be accountable to the tribe and not a Minister of the Crown.'<sup>36</sup>

Ngai Tahu's Papatipu Runanga, as mentioned above, is recognised as being where tino rangatiratanga of the tribe resides. Thus, Ngai Tahu's identity, as hapu and iwi, derives from these bodies. The Trust Board structure, in being derived from the Crown, was neither representative of Ngai Tahu hapu and iwi, or of the 'collective voice' of Ngai Tahu rangatiratanga.<sup>37</sup>

With the Trust Board structure in place, the Crown refused to recognise the existence of Ngai Tahu's Papatipu Runanga. Even the Maori Social and Economic Advancement Act (1945) that legalised tribal executives, and which was enacted prior to the Ngai Tahu Maori Trust Board Act (1946), refused to recognise Ngai Tahu runanga. The Crown-derived Ngai Tahu Trust Board structure was favoured over Ngai Tahu runanga in the following year. In order to cope with their legal non-existence within the Trust Board structure, but at the same time enjoy the benefits deriving from the Maori Social and Economic Advancement Act, such as marae subsidies, runanga were 'forced...to pose as Maori Committees of the New Zealand Maori Council, itself a creature of statute.'<sup>38</sup> Other runanga, including Ngai Tuahuriri, became incorporated societies in order to secure some measure of autonomy.<sup>39</sup>

---

<sup>35</sup>O'Regan, 1989: 259

<sup>36</sup>Ibid: 260

<sup>37</sup>Te Kawenata o Ngai Tahu/Draft Charter, 1993.

<sup>38</sup>O'Regan, 1991: 271

<sup>39</sup>Ibid.

Finally, for an enduring settlement of Ngai Tahu's historic grievances, O'Regan points out that a legal identity is necessary for a final and binding resolution. In the early 1990's, before the Te Runanga o Ngai Tahu Bill had been introduced to Parliament, O'Regan maintained that through past legislation and the persistence of the Trust Board structure the Crown 'in diminishing, and subsequently denying the legal personality of the Ngai Tahu tribe...has effectively denied the existence of the Ngai Tahu rangatiratanga guaranteed by the Treaty.'<sup>40</sup> In turn, this has meant that the Crown has denied itself, an entity with which it can negotiate. There was no Ngai Tahu collective body which could legally represent Ngai Tahu in court or negotiations. For example, the Ngai Tahu Claim was filed with the Waitangi Tribunal in 1986 under Henare Rakiihia Tau's name, rather than "Ngai Tahu". Therefore, in the case of a settlement using the Trust Board structure, the Crown would have been subject to its 'oft recounted nightmare...[where] Ngai Tahu returning in successive future generations...relitigate old claims under the Treaty and...press new claims',<sup>41</sup> as any settlement would not legally represent the iwi and thus the beneficiaries.

The Waitangi Tribunal published a three-volume report in 1991 covering its findings on the Ngai Tahu Claim lodged in 1986. It found in favour of Ngai Tahu upholding the main elements of the land claims. The report further mentioned that the Trust Board structure was inadequate to manage, administer and control new assets resulting from a settlement with the Crown. It stated that: 'the existing structure is not appropriate either on cultural and historic grounds or in terms of the future needs of Ngai Tahu into the 21st Century.'<sup>42</sup>

---

<sup>40</sup>Ibid.

<sup>41</sup>Ibid.

<sup>42</sup>O'Regan, 1991: 272., commenting on the Ngai Tahu Report, para. 24-3

Following the Tribunal's Report, at the first meeting of the Ngai Tahu negotiators with the Crown, the 'concept of Te Runanganui o Tahu was advanced as the tribal authority for Ngai Tahu.'<sup>43</sup>

As far back as 1981 the Trust Board was 'considering developing a structure which would incorporate input from Ngai Tahu runanga.'<sup>44</sup> This was as well as recognising the traditional preeminence of runanga as the decision-makers within the iwi. In 1988 at an Arowhenua hui, the idea was advanced for an Incorporated Society of Papatipu Runanga to be known as Te Runanganui o Tahu.<sup>45</sup> There was growing dissatisfaction with the legislation controlling the Trust Board.<sup>46</sup> Te Runanganui o Tahu came into being on December 17 1989. For Ngai Tahu, the purpose of this body was "to protect, to advance, to develop and to unify the interests of Ngai Tahu in the true spirit of tino rangatiratanga implicit in the Treaty of Waitangi."<sup>47</sup> Another guiding principle of Te Runanganui was also to be accountable to the Ngai Tahu Whanui.<sup>48</sup> For the purposes of Ngai Tahu's organisational structure it was envisaged that Te Runanganui should operate separately from, yet simultaneously to, the Trust Board.<sup>49</sup> Te Runanganui would liaise with the Trust Board in matters of mutual interest. Te Runanganui was a body aiming to autonomously promote Ngai Tahu interests via delegates from 19 runanga. It also gave Ngai Tahu a chance to trial a new management system based around runanga as the tribal authority. Furthermore, Te Runanganui was an expression of Ngai Tahu rangatiratanga over its own affairs.

---

<sup>43</sup>T.M. Tau, 1996: 7

<sup>44</sup>Kelly, 1991: 35-36

<sup>45</sup>T.M. Tau, 1996: 7

<sup>46</sup>Crofts, 1995: 26

<sup>47</sup>Ibid.

<sup>48</sup>Rules of Te Runanganui o Tahu Inc., courtesy of S. Kelly, 1991.

<sup>49</sup>Kelly, 1991: 36

During the late 1980's and early 1990's the Trust Board was becoming more irrelevant to the future direction Ngai Tahu was endeavouring to take. This direction aimed at the restoration of the legal identity of Ngai Tahu by statute and the establishment of a runanga-based tribal authority. Furthermore, Ngai Tahu wished to establish a structure where Ngai Tahu is accountable to itself rather than the Crown, O'Regan states 'an essential feature of tino rangatiratanga promised in the Treaty.'<sup>50</sup>

In 1993, after receiving a tribal mandate by vote at the 1992 Hui-a-Tau at Kaikoura, the Te Runanga o Ngai Tahu Bill was introduced to Parliament, the bill languished for the next two and a half years. The Hon. Koro Wetere, representative for Western Maori at the time, during the Third Reading of the bill stated that the legislation should have been passed by the end of the year in which it was introduced.<sup>51</sup> He further maintained that the bill's three year gestation period 'is probably the second-longest running piece of Maori legislation that I have seen come to this House in my 27 years here.'<sup>52</sup>

Reasons for the delay in passing the bill was that it remained in the Maori Affairs Select Committee for what Ngai Tahu management believe was an unreasonable amount of time. The Ngai Tahu magazine *Te Karaka* recognised that in a tribe as diverse as Ngai Tahu there will be differing opinions on an issue such as the bill. However, *Te Karaka* maintained that Ngai Tahu parliamentarians deliberately employed delaying tactics to prevent the passage of the bill: 'it's common knowledge that the Ngai Tahu MPs for Southern Maori (Hon. Whetu Tirikatene-Sullivan) and Auckland Central (Sandra Lee) are opposed to the Bill. Their attempts to subvert the Ngai Tahu Bill have demeaned

---

<sup>50</sup>O'Regan, 1989: 260

<sup>51</sup>Wetere, 1996: 11947

<sup>52</sup>Ibid.

themselves and the parliamentary process.<sup>53</sup> Their opposition, as reported in the 1996 Te Runanga o Ngai Tahu Annual Report was evident 'right up until the very last.'<sup>54</sup>

Primary reasons discussed for the MPs' opposition included Tirikatene-Sullivan's above mentioned disbelief that Ngai Tahu was actually lacking a legal identity. There was also the argument put forward by Lee that her hapu (Tai Poutini) does not want or need to be part of any centralised structure such as Te Runanga o Ngai Tahu.<sup>55</sup> Tirikatene-Sullivan also levelled the argument that there was a lack of adequate consultation with Ngai Tahu beneficiaries before the introduction of the bill to Parliament. This being the case, as asserted by Tirikatene-Sullivan, consultation of Ngai Tahu beneficiaries took up much of the Select Committee's time.<sup>56</sup>

All three reasons for the MPs' opposition are disputed by Ngai Tahu management. The Ngai Tahu Claim Settlement Act (1944) and the Ngai Tahu Trust Board Act (1946) did not establish a legal identity for Ngai Tahu. The Trust Board structure was merely a restrictive and alien imposition by the Crown on Ngai Tahu, bearing no relation to Ngai Tahu's legal identity except as an impediment. Second, the voluntary membership of two Papatipu Runanga from Lee's hapu of Te Tai Poutini, Kati Waewae and Makaawhio, seems to outweigh the argument that the hapu does not want to be part of a centralised structure. Third, *Te Karaka* magazine asserts that considerable time and effort was devoted to consulting and educating Ngai Tahu beneficiaries 'on all aspects of the Bill and Charter.'<sup>57</sup> This included travelling to ten centres throughout the North and South Island for consultations with Ngai Tahu beneficiaries. This

---

<sup>53</sup>Huria, 1996: 6

<sup>54</sup>O'Regan and Crofts, 1996: 7

<sup>55</sup>Lee, Submission to the Maori affairs Select Committee.

<sup>56</sup>Tirikatene-Sullivan, 1996: 11949

<sup>57</sup>Huria, 1996: 6

effort culminated in Ngai Tahu who attended the 1992 Hui-a-Tau at Kaikoura voting 600:1 in favour of the Te Runanga o Ngai Tahu Bill.<sup>58</sup>

Chairman of the now Te Runanga o Ngai Tahu, Charles Crofts, commented in the 1995 Ngai Tahu Maori Trust Board Annual Report that the slow passage of the bill was a source of constant frustration to himself and his fellow runanga representatives.<sup>59</sup> However, Crofts maintained that, rather than remaining 'hamstrung and at the mercy of the parliamentary system, 'Plan B' is now operational.'<sup>60</sup> On January 20 1995 Te Runanganui o Tahu was placed in recess five years after its inception, and Te Runanga o Ngai Tahu Limited was formed. Plan B involved the formation of this limited liability company. Each of the eighteen runanga representatives held one of the eighteen shares of this company. Here the idea of each runanga representative being a company director was born. Te Runanga o Ngai Tahu Ltd., being a company, were given powers to own assets. However, this company was still not legally recognised as the tribal authority of the iwi while remained the Trust Board, divorced from any runanga representation and limited in its ability to own assets.

Finally, on April 17 1996 the Te Runanga o Ngai Tahu Bill was read for a third time in Parliament. By the time of the Third Reading, bills are usually in the final stages of becoming an act, as was the case for the Te Runanga o Ngai Tahu Bill. With the exception of Tirikatene-Sullivan, comments made by parliamentarians discussing the Bill were of a congratulatory tone. The Hon. Doug Kidd stated that 'in its passage through the House, Parliament and the Crown are re-establishing their recognition of the Ngai Tahu treaty partner. We

---

<sup>58</sup> Ibid.

<sup>59</sup> Crofts, 1995: 26

<sup>60</sup> Ibid.

are restoring to Ngai Tahu that people's passport to the future.'<sup>61</sup> The Prime Minister, Jim Bolger, maintained that:

**The Bill provides Ngai Tahu with a clear legal identity....a structure crafted by Ngai Tahu to suit their purposes for both economic development and the provision of social services. So often commentators, politicians, parliamentarians and even Prime Ministers argue for Maori to show leadership in dealing with their own affairs. In this instance, I congratulate Ngai Tahu on doing exactly that.**<sup>62</sup>

When Royal Assent was given on April 24, the Ngai Tahu Bill became an Act. On this day also, the Ngai Tahu Maori Trust Board legally dissolved and in its place was Te Runanga o Ngai Tahu, the runanga-based tribal executive. No longer did Ngai Tahu have a structure that was accountable to the Crown. It had a completely new organisational structure that was accountable to the Ngai Tahu Whanui. Te Runanga o Ngai Tahu Ltd. was now just Te Runanga o Ngai Tahu.

The 1996 Te Runanga o Ngai Tahu Annual Report maintained that Ngai Tahu owes a debt of gratitude to Prime Minister Jim Bolger for 'securing the final passage of the legislation.'<sup>63</sup> The report asserts that Minister for Treaty Negotiations, Hon. Doug Graham, 'had been almost completely thwarted by the parliamentary process and the Prime Ministerial intervention strengthened his arm considerably in moving the bill through the final stages.'<sup>64</sup> One may assume

---

<sup>61</sup>Kidd, 1996: 11945

<sup>62</sup>Bolger, 1996: 11948

<sup>63</sup>O'Regan and Crofts, 1996: 7

<sup>64</sup>Ibid.



that the 'parliamentary process', referred to, was the delay experienced in Select Committee.

Reflecting on securing the Te Runanga o Ngai Tahu legislation in 1996, O'Regan maintained that this was 'the single most important act of his generation.'<sup>65</sup> It opens the door to a Ngai Tahu derived representation of itself. This legislation allows Ngai Tahu to exercise control over its own assets in its efforts to attain tino rangatiratanga. Tino rangatiratanga, O'Regan states, will be sought after with the acknowledgment of the surrounding circumstances of New Zealand society in the late 1990's.<sup>66</sup>

---

<sup>65</sup>O'Regan, Korero: 23-11-96

<sup>66</sup>Ibid.

## **CHAPTER FIVE**

### **Ngai Tahu's New Organisational Structure and the Internal Expression of Rangatiratanga**

This chapter examines the internal expression of rangatiratanga in Ngai Tahu's new organisational structure. It begins by outlining the mechanics of the organisational structure following its legal inception via the Te Runanga o Ngai Tahu Act (1996). The internal dynamics of the structure, both in theory and practice, are then discussed. The recent emergence of this organisational structure has a bearing on its performance. Currently, it is in a transitional phase between grievance mode and development mode, and these are intersected by preparations for a settlement. The transitional phase gives rationale as to why discrepancies exist between the theory and practice of the structure's internal dynamics. Since the Te Runanga o Ngai Tahu Act, the new role of Te Runanga is to represent the collective rangatiratanga of the Ngai Tahu Whanui. This has created a feeling of antagonism for some Papatipu Runanga, who believe their rangatiratanga within the organisational structure is being ignored.

### **The Mechanics of Ngai Tahu's Organisational Structure:**

A new organisational structure for Ngai Tahu was discussed in the 1980's. In April 1996 this structure officially replaced the existing Ngai Tahu Maori Trust Board 'which operated under successive governments for 50 years.'<sup>1</sup> The new structure gave Ngai Tahu not only a legal identity, via statutory acknowledgment of the Te Runanga o Ngai Tahu Act (1996), but the opportunity to 'control its own destiny.'<sup>2</sup> Ngai Tahu iwi management and their governing body, Te Runanga o Ngai Tahu (Te Runanga), are now accountable to Ngai Tahu beneficiaries rather than the Crown Minister of Maori Affairs, as had been the case previously. The desire to be accountable to the beneficiaries was expressed by Ngai Tahu Social Development manager, Koa Mantell, who explained that in 1988 it was felt that the Trust Board had to go in order to achieve this.<sup>3</sup>

---

<sup>1</sup>Te Runanga o Ngai Tahu Annual Report, 1996: 22

<sup>2</sup>Ibid.

<sup>3</sup>Mantell, Korero: 15-9-96

The mechanics of Ngai Tahu's new organisational structure has been presented to the Ngai Tahu individuals via annual reports, runanga hui, and within more public forums such as a university lecture.<sup>4</sup> In diagrammatical form presentations reveal the theoretical hierarchy which exists in the structure.<sup>5</sup> The order of importance begins from the top down. Placed at the very top of the structure are the Ngai Tahu Whanui defined as: 'the collective of individuals who descend from the five primary hapu of Ngai Tahu and Ngati Mamoe, namely Kati Kuri, Kati Irakehu, Kati Huirapa, Ngai Tuahuriri and Kati Te Ruahikihiki.'<sup>6</sup> The official census of 1991, as stated by Mantell, estimates the Whanui at 21,000. Mantell's working figure as of 1996 was a population of 25-26,000.<sup>7</sup> As Rakiihia Tau has mentioned, not all Ngai Tahu have registered with Ngai Tahu iwi management for various reasons, including the conviction that some Ngai Tahu already know who they are and feel it is unnecessary to enrol with some seemingly ambiguous structure.<sup>8</sup>

Within the Ngai Tahu Whanui are the eighteen Papatipu Marae and their associated runanga. Runanga act to represent their beneficiaries and protect their interests. They are formed by beneficiaries connected to the takiwa, or district, and each other, by whakapapa. Runanga are incorporated societies, structured along what some would say, are Pakeha committee lines. Paradoxically, however, they institute and give expression to tikanga, or Maori customary law, and te kawa o te marae, or the traditional protocols of a specific marae. They have a chairman (Upoko Runanga), a deputy chairman (deputy

---

<sup>4</sup>Te Runanga o Ngai Tahu Annual Report 1995, 1996; Sewell, Korero: 16-9-96; Mantell, Korero: 15-9-96.

<sup>5</sup>see Appendix 3. The Ngai Tahu Whanui in the diagram includes the 18 Papatipu runanga.

<sup>6</sup>Draft Charter, 1993: 3

<sup>7</sup>Mantell, Korero: 15-9-96

<sup>8</sup>R. Tau, Interview: 13-2-96

Upoko), treasurer, secretary and a runanga representative and alternate who are one of eighteen directors at Te Runanga.<sup>9</sup>

Stepping down a level, representing the eighteen runanga, is Te Runanga. Directors from the eighteen runanga represent and vote on their runanga's behalf.<sup>10</sup> They are also required to act in the best interests of Ngai Tahu, in 'good faith and in a manner that the runanga representative believes on reasonable grounds is in the best interests of Ngai Tahu Whanui as a whole.'<sup>11</sup> Te Runanga itself, being the tribal governing body, is the 'repository of the collective tino rangatiratanga of the Ngai Tahu Whanui.'<sup>12</sup> Te Runanga is the legal representative of the Ngai Tahu Whanui's collective interest.<sup>13</sup> It is also the legal holder of all Ngai Tahu assets and liabilities.<sup>14</sup>

Flowing directly down from Te Runanga is Ngai Tahu Group Management (Group Management). Group Management is the administrative arm of Te Runanga and acts on their behalf relaying its directives to the Ngai Tahu Development Corporation (Development Corporation) and the Ngai Tahu Holding Corporation (Holding Corporation).<sup>15</sup> Group Management encompasses the chief executive officer (CEO), whakapapa research, corporate services such as accounting and clerical staff, the monitoring of investments and public policy affairs.

Branching out from Group Management are the two operational arms of iwi management. These are the Holding Corporation and Development Corporation. The official role of the Holding Corporation is 'to use on behalf of Te Runanga

---

<sup>9</sup>I use the word *chairman* as only men are upoko.

<sup>10</sup>Draft Charter, 1993: 5

<sup>11</sup>Ibid: 11 = notice the conflict between these two requirements.

<sup>12</sup>Ibid: 8

<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

<sup>15</sup>Ibid: 13

the assets of Te Runanga allocated to it and prudently administer them and its liabilities by operating as a profitable and efficient business.'<sup>16</sup> The Holding Corporation's 'direction comes in the main form of the CEO and the investment manager.'<sup>17</sup> The primary function of the Holding Corporation is to rebuild Ngai Tahu's economic base via four major avenues: fisheries, properties, tourism and finance.<sup>18</sup> A fifth avenue involving forestry and farming may eventuate as an outcome of a settlement deal and as part of corporate Ngai Tahu's evolution.

Part of the profit made from the companies within the Holding Corporation finances the Development Corporation. For example, out of Ngai Tahu Properties Ltd, 40% of the profit made is given to Development Corporation and the remaining 60% is invested back into property.<sup>19</sup> Overseeing the functioning of the Holding Corporation is a Board of Directors comprising of six directors. These directors are appointed by Te Runanga due to their expertise in certain areas. The chairperson of the Holding Corporation directors is Sir Tipene O'Regan.

The official role of the Development Corporation is:

**to use prudently on behalf of Te Runanga the assets allocated to it and to administer them and its liabilities by pursuing in an efficient manner such social and cultural development objectives as may from time to time be approved by Te Runanga within the context of plans for the social and cultural development of Ngai Tahu Whanui.<sup>20</sup>**

---

<sup>16</sup>Ibid.

<sup>17</sup>Ngai Tahu Maori Trust Board Annual Report, 1995: 18

<sup>18</sup>Sewell, Korero: 16-9-96

<sup>19</sup>Ibid.

<sup>20</sup>Draft Charter, 1993: 13

At the top of the Development Corporation's management structure is the CEO. The primary objective of the Development Corporation is the renewal of strength, both social and cultural, of the whanau, hapu and iwi.<sup>21</sup> Part of the renewal of this strength involves the allocation of finances produced by the Holding Corporation. Supplying the Development Corporation with its main direction are the two key executives, the Social Development Manager and the Runanga Development Manager. The Social Development Manager, oversees the delivery of education and health programmes. She also helps create an environment which aims to foster all aspects of Ngai Tahu and Maori culture both traditional and contemporary.

One facet of the Runanga Development Manager's function involves relaying and developing communications between runanga and iwi management. The Runanga Manager also helps promote cultural development at this level.

Like the Holding Corporation, overseeing the Development Corporation is a board of six directors. These directors too are appointed by Te Runanga for their expertise in certain areas. The chairperson of these directors is R. Tau.

### **The Internal Dynamics of Ngai Tahu's Organisational Structure - The Theory and The Practice:**

Te Runanga is still an extremely young organisation. It has barely been a year since its birth and the dissolution of the Trust Board. It would be a denial of reality to expect that all actions and dealings Te Runanga undertakes at this stage should be primarily faultless. As R. Tau maintains, 'any new structure will make mistakes.'<sup>22</sup> From this perspective, then, I believe Te Runanga is undergoing a period of transition where new relationships are being forged and

---

<sup>21</sup>Mantell, Korero: 15-9-96

<sup>22</sup>R. Tau, Interview: 13-2-97

trialed, such as those between Te Runanga and iwi management. Furthermore, old relationships, such as those between runanga and a centralised iwi administration, are being re-connected within the design of a new structure. The boundaries are being defined and limitations discovered.

During this transitional phase, Te Runanga has had to deal with many challenges, partly due to the recent emergence of the organisational structure. The Heads of Agreement, signed on October 5 1996, and the likelihood of a Deed of Settlement transpiring from this, is one amongst many. Perhaps the challenge issued by the Heads of Agreement may be the biggest Te Runanga will have to face for a very long time.

The transitional phase began with Te Runanga's coming into being in April 1996. It will continue throughout the time a settlement deal is negotiated and into the period where forms of allocation procedures are settled on. This transitional phase marks a change of paradigm for Ngai Tahu which entails the shifting of mind-sets. O'Regan has mentioned on a number of occasions that the shifting of mind-sets for Ngai Tahu means that Ngai Tahu can move 'out of grievance mode and into development mode.'<sup>23</sup> Grievance mode has existed through the Ngai Tahu Claim for almost 150 years. The move into development mode involves finally settling the Ngai Tahu Claim and using the resultant financial injection to promote the social development of all Ngai Tahu individuals.

However, before grievance mode can progress into development mode, constructive and inclusive debate throughout the iwi needs to occur. In other words, debate mode. This will serve to provide Ngai Tahu with a clear and relatively unified focus in a specific direction for the future. As O'Regan has

---

<sup>23</sup>O'Regan, Korero: 15-9-96; 1994: 47



stated, 'people will only accelerate change if they are committed to principles.'<sup>24</sup> The challenge for Ngai Tahu is formulating those principles. Hence, the need for constructive and inclusive debate. Debate must be shared between all levels of the organisational structure and needs to take place in all of the appropriate forums. If the central administration intends to take the whole tribe into the future, the paramount forums for debate will have to be where the people reside. Primarily, these forums are runanga, and secondly, the runanga collective of Te Runanga.

The transitional phase has a direct relationship to rangatiratanga. New relationships between runanga and Te Runanga will test the boundaries of where rangatiratanga, or in this context authority, lies with regards to each body's sphere of influence. The internal expression of rangatiratanga is being renegotiated and evolved according to the changing needs of Ngai Tahu as an iwi, such as its conglomeration of hapu into a single body known as Te Runanga. Between Te Runanga and iwi management, the body representing the collective tino rangatiratanga of runanga and, thus, the Ngai Tahu Whanui, is Te Runanga. They, as the mandated tribal leaders, will have to determine the appropriate role of iwi management.

A shift in paradigm also means a shift of focus in relation to rangatiratanga. For Ngai Tahu, grievance mode meant that utu, remedy, was sought for rangatiratanga repressed and usurped by the Crown through breach of contract. Post-settlement development mode entails that the rangatiratanga of Ngai Tahu individuals and therefore, of the iwi, is fostered.

---

<sup>24</sup>Ibid., 1994: 44

### **The Theoretical Dynamics of the Organisational Structure:**

During my interview with R. Tau, on a number of occasions he referred to how the dynamics of the organisational structure are to operate in theory. In the 1980s R. Tau played a major role, not only in formulating the new structure, but in disseminating the theory of the new structure's dynamics to runanga. He conceived the idea of the House of Tahu.<sup>25</sup> Thus, much of the following information on the theory of the organisational structure is gleaned from his interview. Outlining the theory of the structure will indicate discrepancies between its theory and practice. These are discussed below.

Within the new structure, the role of runanga exists much as it always has from time immemorial in certain respects. The runanga - and its sacred place of existence - the marae, is where the rangatiratanga of collective whanau resides. It is the place where the rangatiratanga of the hapu is expressed. The runanga, and the takiwa in which it exists, has rangatiratanga - or in this context, chieftainship - over the district's affairs. This means that the runanga acts as kaitiaki, or guardian, and protector of their beneficiaries (that is, the collective whanau) rights within the runanga takiwa.<sup>26</sup> Within the Ngai Tahu rohe there are eighteen such runanga. This translates, therefore, into eighteen relatively autonomous spheres of influence with regards to hapu affairs.

During the 1980s, when preparations were being made to present the Ngai Tahu Claim to the Waitangi Tribunal, R. Tau emphasised to runanga that they would not lose rangatiratanga over their own local affairs. This was to be so even though the House of Tahu was being set up to collectivise all Ngai Tahu

---

<sup>25</sup>The idea of House of Tahu was conceived by R. Tau in Ngai Tuahuriri's Wharenuī during the mid-1980s. This was during solitary contemplation on the future of Ngai Tahu (R. Tau, Interview: 13-2-97). The House of Tahu is a concept rather than something concrete and tangible. The concept is that all Ngai Tahu organisations exist within the various rooms of the House. Ngai Tahu assets are then divided into the various organisations existing in the rooms.

<sup>26</sup>Two definitions of a beneficiary and their inherent rights are discussed in Chapter 6.

organisations, including runanga, and the Ngai Tahu Claim was to be tribally administered.

A number of reasons existed for this collectivised approach to the management of Ngai Tahu organisations. One was efficiency. It did not make sense to have eighteen separate administrative arms. For the eighteen runanga this would mean 'heavy administrative strains...[and] heavy duplication of administrative effort.'<sup>27</sup>

Another was that with one administrative structure, all efforts could be focused on fighting for the Claim. This also meant that one organisation could shoulder the financial burdens of running The Claim rather than runanga who do not have the resources.

Furthermore, from the experiences of having one administrative organisation, R. Tau foresees that in the future runanga will be able to evolve more successfully into fully autonomous regions of administration. However, this will be a gradual process for runanga where new skills will have to be acquired to cope with new administrative demands.

Thus, the rangatiratanga of runanga has been limited by the iwi. Administrative autonomy resides in Ngai Tahu's centralised organisational structure and not in runanga. Matters, such as negotiations with the Crown to settle the Claim, are also deemed to be of tribal importance and are conducted by the Negotiating Group rather than specific runanga managing specific areas of claim.

Therefore, the role each of the eighteen runanga is to act as protector of beneficial interests within its takiwa in relation to local hapu affairs. This partly

---

<sup>27</sup>O'Regan, 1989: 261

involves scrutinising any Te Runanga directives and resource management actions of local area councils.

As reflected by the hierarchical diagram of the Ngai Tahu organisational structure, the eighteen runanga are placed at the very top indicating that 'they are and should be the authority.'<sup>28</sup> Theoretically, runanga are paramount in the organisational structure as all Ngai Tahu individuals have whanau and can be represented by runanga if they so desire. In turn, runanga embody the collective rangatiratanga of these whanau as mentioned above. The wants, needs and desires of beneficiaries are expressed at this level. A reason for Ngai Tahu's restructuring from the Trust Board to Te Runanga was to have greater runanga input into tribal policy via Te Runanga, and 'the tribes...elected representatives be accountable to the tribe itself, in the form of the traditional runanga.'<sup>29</sup>

Te Runanga, formed by directors representing the eighteen runanga, is the parliament that formulates iwi policy.<sup>30</sup> Its eighteen directors represent eighteen discrete pockets of sovereignty because runanga have rangatiratanga over their local affairs. Here, then, Te Runanga illustrates an example of divisible sovereignty, where the central governing body is limited by, and must accommodate, eighteen other sovereigns.<sup>31</sup>

In theory, Te Runanga has the role of serving the best interests of the Ngai Tahu Whanui in which the eighteen runanga are its primary groups. This means that Te Runanga administers the assets and liabilities, as kaitiaki, of the Ngai Tahu Whanui. This entails that a high level of accountability to Ngai Tahu beneficiaries is required. Part of its function is to support and protect the

---

<sup>28</sup>R. Tau, Interview: 13-2-97

<sup>29</sup>O'Regan, 1989: 260

<sup>30</sup>Ibid: 261

<sup>31</sup>See Appendix 5 for a discussion of divisible sovereignty as it applies to the Treaty.

rangatiratanga of runanga<sup>32</sup>, as well as being the repository for the collective tino rangatiratanga of the Ngai Tahu Whanui, as stated in Section 3(a) of the Charter. It does all this by making tribal policy. Part of the support and protection of runanga rangatiratanga is in the allocation of resources, be it financial or some other form, to serve beneficiaries.<sup>33</sup> On the hierarchical diagram, Te Runanga is a step down from runanga, indicating its role, amongst others, of servitude to runanga.

Te Runanga also acts as kaitiaki of, and represents, Ngai Tahu whanaungatanga, variously translated as kinship or 'cousinhood'.<sup>34</sup> Kin relationships within the iwi are strengthened by having one representative and relatively uniting body, that is, Te Runanga. This helps Te Runanga to manage the relationships between runanga ensuring that no runanga 'unfairly prejudices or unfairly discriminates against any particular Papatipu Runanga'.<sup>35</sup> Inter-runanga relationships are managed on the assumption of shared goodwill.

Iwi management, which includes Group Management, the Holding Corporation and the Development Corporation, as indicated by the hierarchical diagram, and are the servants of Te Runanga. The Holding Corporation and the Development Corporation are operated in line with the principle of clearly separating wealth accumulation and wealth distribution arms of the tribe. In this way, conflicts of interest between the two corporations roles are kept to a minimum. This principle is layed down by Te Kawenata o Ngai Tahu's *Kaupapa Poutahu*, in the Charter.<sup>36</sup> Their primary role is to provide information to Te Runanga so that it can create the appropriate policies in the interests of the eighteen runanga.<sup>37</sup> Iwi

---

<sup>32</sup>R. Tau, Interview: 13-2-97

<sup>33</sup>*Ibid.*

<sup>34</sup>Cleave, 1983: 54

<sup>35</sup>Draft Charter, 1993: 11

<sup>36</sup>Te Kawenata o Ngai Tahu embodies six principles by which the Ngai Tahu organisational structure operates. It is reproduced in Appendix 4.

<sup>37</sup>T. M. Tau, Interview: 29-1-97

management work for the betterment of the Ngai Tahu Whanui through research, monitoring and auditing. They ensure the protection of Ngai Tahu capital interests.<sup>38</sup> These capital interests are not only financial, but also human, reflecting the work of both Holding Corporation and Development Corporation.

### **The Practical Dynamics of the Organisational Structure:**

The following section highlights the struggle for the reaffirmation of runanga rangatiratanga and Te Runanga's expression of its new role in Ngai Tahu's organisational structure.

While attending both runanga and Te Runanga hui during 1996, I observed an antagonistic relationship taking place between some runanga and Te Runanga. At the core of the antagonism is the struggle for reaffirmed rangatiratanga of runanga and the establishment of authority of Te Runanga as the repository of Ngai Tahu Whanui's collective tino rangatiratanga. I believe the antagonism is due to the transitional phase and has been exacerbated by the Heads of Agreement. The Heads of Agreement, which outlined agreements reached in principle between Negotiating Group and the Crown, demonstrated the practical dynamics of the Ngai Tahu organisational structure. The following discussion is a result of my participant observations at Ngai Tuahuriri Runanga hui, observations at 1996 Te Runanga hui, the 1996 Hui-a-Tau, and three interviews with different Ngai Tahu individuals.

By way of introducing the runanga into the discussion of the practical dynamics within the Ngai Tahu structure, R. Tau gives a runanga perspective of how they regard themselves and the Ngai Tahu structure: 'the maraes are autonomous, they always have been and they are inward looking to their region.'<sup>39</sup>

---

<sup>38</sup>R. Tau, Interview: 13-2-97

<sup>39</sup>Ibid.

Ngai Tuahuriri has grudgingly accepted centralised administrative concept of the House of Tahu. While it is agreed that the House of Tahu is more cost-effective than having eighteen separate administrative bodies, it takes away a degree of autonomy over runanga affairs. Here, then, self-determination, an important aspect of rangatiratanga, of runanga and beneficiaries is limited as the allocation of finance is controlled by the Holding Corporation.

For some runanga members, the growing concern is that settlement compensation, whether it be directly from the quantum or profit made from investments, will remain within the centralised structure of Ngai Tahu. It may not be used to actually remedy grievances whanau have harboured for generations, but used instead to finance business goals of Ngai Tahu's corporate structure and those within it. This concern is fed by the way in which the acceptance of the quantum and the Heads of Agreement took place without first consulting runanga.<sup>40</sup> The quantum of \$170 million was accepted by Te Runanga in a closed session of their hui at Otakou.<sup>41</sup> This decision was regarded as one of great importance as it decided on a fixed sum to finalise the entire Ngai Tahu Claim, however, it received no runanga input. The Heads of Agreement was signed prior to any Te Runanga and runanga deliberations over its contents.<sup>42</sup> This decision too was regarded as one of great importance as it laid down the very principles that Ngai Tahu were prepared to negotiate on.

Reinforcing such concerns is that the quantum of \$170 million, which collectivises the redress from the Crown, goes into the centralised Ngai Tahu

---

<sup>40</sup>The Heads of Agreement, its contents and process of acceptance, is discussed more fully in Chapter 6.

<sup>41</sup>Ngai Tuahuriri hui: 7-9-96

<sup>42</sup>R. Tau, Korero: 6-10-96

structure, rather than being applied directly to the grievances from the 10 deed areas where land was taken last century:

**There's a lot of mistrust against the negotiators, against Te Runanga o Ngai Tahu, that we're building a castle for a selected few. It's been said all over the place, a special group of Ngai Tahu are getting all the benefits....the only ones who don't believe it are the ones who are sitting there.<sup>43</sup>**

Thus, for some runanga beneficiaries, the appearance of their place within the Ngai Tahu structure is one of exclusion. Their rangatiratanga within their takiwa, where part of the Ngai Tahu Claim originates, is seemingly ignored by the organisational structure.

As R. Tau has maintained, traditionally, if anybody tries to deny someone's rangatiratanga it is 'the basis for warfare'.<sup>44</sup> In today's terms, then, if it is perceived by runanga that their rangatiratanga is being ignored, and thus denied, by a lack of inclusion in important decisions, this is the basis for some kind of radical action. Radical action from where runanga are positioned in the Ngai Tahu structure, R. Tau warns, is to break up the House of Tahu. This would mean that some runanga would seek to reach a settlement for the grievances within their takiwa alone.<sup>45</sup> Furthermore, they would autonomously administer themselves separately from the Ngai Tahu organisational structure. R. Tau believes that a bid for runanga autonomy at this stage would be premature.<sup>46</sup> Hence, this underlines the need to include runanga in the organisational structure's decision-making processes.

---

<sup>43</sup>R. Tau, Interview: 13-2-97

<sup>44</sup>Ibid.

<sup>45</sup>Ngai Tuahuriri hui: 16-2-97

<sup>46</sup>R. Tau, Interview: 13-2-97



In this transitional phase, misgivings have been expressed about Te Runanga's overall representativeness as 'the repository of the collective tino rangatiratanga of the Ngai Tahu Whanui.'<sup>47</sup> I see this criticism as being constructive rather than destructive. Criticism is healthy and indicates new avenues to be analysed, considered and improved upon if perceived as valid and necessary. A discussion of this criticism follows.

One concern I came across during this research is the perception that Te Runanga does not adequately fulfil the role of Ngai Tahu's iwi parliament and, thus, Ngai Tahu's tribal leaders. This directly impacts on the perceived ability of Te Runanga to be Ngai Tahu Whanui's repository of tino rangatiratanga. From the very implementation of Te Runanga, runanga representatives have been a 'board of directors' rather than the representatives of the iwi.<sup>48</sup> Although this may seem trifling, as we are just dealing with terms of reference, within these terms assumptions can be made. One such assumption is that runanga representatives are primarily minders of Ngai Tahu, the corporate entity, rather than representatives of the Ngai Tahu Whanui. Section 6.6 of the Draft Charter maintains that each runanga representative acts as the runanga representative who attends, speaks and votes on the runanga's behalf.<sup>49</sup> This indicates that directors primarily represent the Ngai Tahu Whanui rather than corporate Ngai Tahu.

Part of the role of Te Runanga is to be kaitiaki of the assets and liabilities of the Ngai Tahu Whanui. This naturally involves a corporate dimension. However, the primary role is to be 'representative of the collective tino rangatiratanga of the

---

<sup>47</sup>Draft Charter, 1993: 8

<sup>48</sup>Ngai Tahu Maori Trust Board Annual Report, 1995: 16

<sup>49</sup>Draft Charter, 1993: 10

Ngai Tahu Whanui.<sup>50</sup> This involves the creation of tribal policy which not only endeavours to harness the majority of Ngai Tahu Whanui's wishes, but also involves the ability to give clear directives to primarily Group Management, and in turn, the Holding Corporation and the Development Corporation. On this issue Te Maire Tau, Director of Ngai Tahu Research Centre, maintains that:

**Once you change an MP [meaning a runanga representative] to Director, the whole imagery and illusion changes. They think they've got a commercial and fiscal responsibility, which they have, but first and foremost they are members of parliament.<sup>51</sup>**

Thus, the wrong assumptions can be made out of a term of reference such as 'director.'

A number of other factors have been suggested which combine to hinder Te Runanga's performance as a tribal parliament. First, the directors themselves lack the luxury of time to spend on issues of importance to Te Runanga. They are largely unpaid workers for Ngai Tahu, which means they have other full-time work away from iwi issues. The directors have to grapple with large amounts of information, involving complex issues, in a limited amount of time.<sup>52</sup> From this they not only have to consult and inform their runanga on issues of importance, but they also have to be in an informed position to create policy to direct Group Management.

Second, the directors reside throughout Te Waipounamu, many of them hours away from Christchurch, where iwi management is conducted. Furthermore, they are hours away from each other. Each director is isolated, not only from

---

<sup>50</sup>Ibid: 8

<sup>51</sup>T. M. Tau, Interview: 29-1-97

<sup>52</sup>Ibid.

informal contact and feedback from management structures, but also informal debate with a number of other directors. Human and academic resources, useful for reference on certain issues, are inaccessible in a short amount of time.<sup>53</sup>

Third is the communication breakdown between directors and their respective runanga. R. Tau maintains that with decisions of tribal importance agreed to with the Crown, 'there are unclear processes...that Te Runanga o Ngai Tahu...must go back to their beneficiaries, via their runanga, and get a mandate from their runanga to be approved at Te Runanga o Ngai Tahu level.'<sup>54</sup> The rationale for this is to ensure that directors do in fact represent their runanga and vote accordingly at Te Runanga. Directors disseminating information to their runanga allow beneficiaries to deliberate over matters of tribal importance and adopt an informed position in order to instruct their directors. Observing this practice would mean that not only theoretically, but practically the Ngai Tahu Whanui would reside at the top of the organisational structure. Thus, the rangatiratanga of runanga over their takiwa is able to be expressed within the organisational structure. Runanga can also practically fulfil their responsibility of protecting the beneficial interests of their people by deciding whether or not to provide their director with a mandate for a certain decision.

When communication breaks down between directors and their runanga, runanga are denied, not only critical information, but input into decisions. Basically, runanga are left out of the organisational structure.

A primary factor contributing to a communication breakdown between Te Runanga and runanga, as suggested by O'Regan, may be the pressures of external timetables placed on directors.<sup>55</sup> As well as having to understand and

---

<sup>53</sup>Ibid.

<sup>54</sup>R. Tau, Interview: 13-2-97

<sup>55</sup>O'Regan, Commentary at Arowhenua Hui: 15-9-96

assimilate information dealing with complex issues in a short amount of time, directors are required to inform their runanga so they can help determine decisions of tribal importance. Practically, then, when time is unavailable to allow for directors to fully understand issues runanga are unlikely to be consulted. From a runanga beneficiary's perspective is the following:

**I feel that Te Runanga o Ngai Tahu have in a way failed. I can't blame them, its something that's happened. They haven't been aware of what was happening. They haven't gone back to their runanga to fully discuss all of the issues with nga runanga...That would be partly one of the reasons why Te Runanga o Ngai Tahu has failed to...be the voice of Ngai Tahu runanga.<sup>56</sup>**

O'Regan has acknowledged the occurrences of communication breakdowns with Ngai Tahu's beneficiaries. He warned that if there is no communication, Ngai Tahu risks losing the putea through a loss of tribal cohesion.<sup>57</sup> Furthermore, he maintained that 'inadequate politics' will be the only thing that makes Te Runanga falter.<sup>58</sup> This could result from something as simple as a lack of communication.

Te Runanga is now in a role of leadership as they are responsible for creating tribal policy, and thus, providing direction for the iwi. Te Runanga assumed this role suddenly on April 24 1996 when the Trust Board legally dissolved. Prior to that, O'Regan had been Trust Board Chairman since 1983,<sup>59</sup> and in effect, he was one of two tribal leaders, according to T. M. Tau, who maintains that he has 'only seen two leaders in the tribe and that's Dad [R. Tau] and Steven

---

<sup>56</sup>Te Aika, Interview: 7-1-97

<sup>57</sup>O'Regan, Korero: 21-9-96

<sup>58</sup>Ibid.

<sup>59</sup>Melbourne, 1995: 154

[O'Regan].<sup>60</sup> In helping to create Te Runanga, O'Regan realised that 'the growth of a stable decision-making structure is critical if the iwi's assets are not to be placed at risk...[particularly] when that same polity is carrying the assets for the next generation - nga hua mokopuna.'<sup>61</sup> O'Regan further stated that one reason for dissolving the Trust Board was so that runanga, via Te Runanga, could be included in central Ngai Tahu's development plans for the future.<sup>62</sup> This reinforced the argument for tribal cohesiveness. Through the creation of a decision-making structure, tribal direction would be preserved when the core decision-makers of O'Regan's generation, within the Trust Board, die out. Hence, the new structure would be a self-sustaining one.

Therefore, following this logic, O'Regan has set about 'weaning' the iwi off his leadership. Te Runanga is now expected to evolve and grow into a leadership role:

**And that's his analogy....Steven's trying to move out of the tribe. His real desire is to get the baby walking. He's slowly moving out but he's still got a baby and baby's don't know anything....He's expecting the leaders to lead. Its an ideal thing where you just give them information and let them evolve and grow by themselves.**<sup>63</sup>

As it is still an early stage in Te Runanga's development O'Regan's theory is still being trialed. However, growth at present may be somewhat stunted if at the very outset various factors, as discussed above, combine to prevent directors from being adequately informed to create policy. As T. M. Tau states, with

---

<sup>60</sup>T. M. Tau, Interview: 29-1-97

<sup>61</sup>O'Regan, 1994: 46

<sup>62</sup>Ibid., Korero: 15-9-96

<sup>63</sup>T.M. Tau, Interview: 29-1-97

regards to O'Regan's theory: 'It doesn't happen like that, you have to support and nurture people.'<sup>64</sup>

During the development of Te Runanga's leadership skills, a leadership vacuum is created. Into this vacuum, logically, would step the next best option for leadership, which is Ngai Tahu iwi management. They are well informed on all Ngai Tahu issues as their work days are spent dealing with them. They are comprise Group Management, the Holding Corporation and the Development Corporation who together are the administrative and management structures designed to implement the directives of Te Runanga. In other words, as T. M. Tau suggests they are 'the bureaucracy.'<sup>65</sup>

What seems to be occurring is that Te Runanga, still coming to grips with a new leadership role, are at present the passive leaders. In order to maintain the momentum of progress towards the goal of settlement of the Ngai Tahu Claim and corporate 'business-as-usual' ticking over, iwi management have become the active leaders.

Iwi management have responded pragmatically adapting to the situation where tribal leadership, for the time being, is preoccupied with their new roles. Iwi management have assumed a substitute leadership role as highlighted by T.M. Tau:

**Runanga o Tahu and the bureaucracy aren't functioning the like they should. The bureaucracy's great, really, they're doing a stunning job. It's just they're not fettered...they're not controlled....They're very efficient. I know the bureaucrats there**

---

<sup>64</sup>Ibid.

<sup>65</sup>Ibid.

and they'll do what they're told. If you give them directions, they'll do it. It's just no one's giving them damn directions, so they have to create things for themselves. There's nothing underhanded going on.<sup>66</sup>

However, if this is the case, iwi management's relationship to the eighteen runanga, and thus Ngai Tahu Whanui, is indirect. They work on their behalf, but are not the mandated leaders as are Te Runanga. The signing of the Heads of Agreement, which works towards a deed of settlement, lends a good example of this.

Spearheading the negotiations with the Crown are the Negotiating Group. They are an offshoot of Group Management. In an efficient manner, the goal of reaching a settlement in principle before the MMP election was attained on 5-10-96 with only a week to spare. The desire to achieve this goal was discussed months before during a Te Runanga hui on 18-5-96.<sup>67</sup> This was the Negotiating Group's agenda for the rest of 1996. Before Te Runanga deliberated on the contents of the Heads of Agreement, and runanga consulted by their director, the Heads of Agreement was signed. R. Tau, one of the principal negotiators, gives the process of how the Heads of Agreement came to be signed:

**There are unclear processes at Te Runanga o Ngai Tahu level, in terms of natural justice, concerning the beneficiaries. In that anything agreed to at the political level with the Crown should go back to Te Runanga o Ngai Tahu, who in turn, must go back to their runanga and get the mandate from their runanga to be approved at Te Runanga o Ngai Tahu. Are those processes being**

---

<sup>66</sup>Ibid.

<sup>67</sup>Goodall, Korero: 18-5-96

followed? What has happened is that the members of Te Runanga o Ngai Tahu are making those decisions without consultation back to their...runanga....we [the Negotiating Group] are required to notify [Te Runanga], not by telephone conversation, but by a meeting. And then they had to get a mandate from each...runanga. But that process did not take place.

Seeming to confirm the notion that iwi management, via the Negotiating Group, have taken up the role of leadership, submissions by runanga and individual beneficiaries in relation to the Heads of Agreement are deliberated on by the Negotiating Group. It will be their decision rather than Te Runanga's as to whether a submission warrants any action. On this issue Ngai Tuahuriri beneficiary, Mahara Te Aika, stated that:

Whether they [Te Runanga] actually hold the power as far as the settlement goes is something else....I rang the Claims Manager, Anake Goodall....specifically, I wanted to know what were the procedures for people wanting to put submissions in....Now I was quite interested in his replies which were that...submissions...weren't going to Te Runanga o Ngai Tahu.... I said, "Who will make the decisions as to what is put in or left out?"

And he said, "The negotiators will make those decisions".<sup>68</sup>

In order to remain within a reasonable time frame, and maintain consistency of argument through having an intimate knowledge of what is available for negotiation, it seems to make sense that the Negotiating Group should have

---

<sup>68</sup>Te Aika, Interview: 7-1-97



final arbitration over submissions. However, some believe that the collective wisdom of Te Runanga would be more appropriate for decisions which have a direct relationship to runanga rangatiratanga within their takiwa. In this way, mandated leaders fully accountable to runanga make the decisions rather than negotiators who are far less accessible and accountable to runanga.

Another point of concern for some Ngai Tahu is the seeming conflict of interest that exists between Te Runanga and iwi management. Two directors of Te Runanga are also members of the Negotiating Group:

**There is now another person on that negotiating team who is also a member of Te Runanga o Ngai Tahu, and yet where is the power supposed to lie? With Te Runanga, it doesn't. But a couple of members now have gone into where the power lies. Its interesting, curious.<sup>69</sup>**

An advantage of this is that first hand information on negotiations can be shared by the negotiating members of Te Runanga with the other directors. A disadvantage could be that the Negotiating Group may be able to exert undue influence in support of important decisions that have not been fully scrutinised by Te Runanga, and in turn, runanga. The fear is that Te Runanga, being a relatively new body with inexperienced directors still coming to terms with its demands, can be easily 'captured' by iwi management with greater corporate savvy. It is not argued that the directors are unwise, just currently vulnerable. After all, the Negotiating Group has relative 'heavy weights' working for them in regards to leadership skills and credentials. Not only do the two principal negotiators, O'Regan and R. Tau, have an inherent leadership legacy deriving from the Trust Board days, but 'among its closest strategic advisers [are] the

---

<sup>69</sup>Ibid.

celebrated Rogernomics exponents C. S. First Boston and...the best legal brains in the country...Bell, Gully, Buddle and Weir.<sup>70</sup>

Therefore, in an environment where there is a leadership vacuum, Te Runanga seems to be relying on those who offer the strongest and most convincing arguments. If this is the case, in place of well informed deliberations, and hence debate, Te Runanga substitutes the Negotiating Group's agenda of reaching a negotiated settlement with the Crown as part of its own policy objectives. At a Te Runanga hui, although speaking on a different subject, O'Regan suggested that there is a lack of debate at Te Runanga level. He maintained that Te Runanga has all the problems of a small nation such as New Zealand: all talk concentrates on the distribution of putea. However, there is no debate, and thus, a lack of principles formulated to focus on how distribution should take place.<sup>71</sup>

The Negotiating Group's agenda is:

**O'Regan's great theory...you get the critical mass to take your tribe out of dependence...His thing is you'll never get justice, once you accept that then you have to cut the best deal you can to get your tribe out of dependence mode.<sup>72</sup>**

However, achieving the best deals and a preoccupation with deadlines are the pitfalls of using the Negotiating Group's agenda in place of policy created by Te Runanga. The Negotiating Group are mandated negotiators rather than runanga consultants that help to accommodate rangatiratanga. Runanga consultancy is the job of Te Runanga. Highlighting the concern that Te Runanga is not creating policy R. Tau states: 'I believe that is part of the concerns of here [Ngai

---

<sup>70</sup>Brett, 1992: 58

<sup>71</sup>O'Regan, Korero: 21-9-96

<sup>72</sup>T.M. Tau, Interview: 29-1-97

Tuahuriri Runanga], that is management...is leading Te Runanga o Ngai Tahu and therefore overstepping their boundaries in terms of the rangatiratanga that is Tuahiwi's responsibility.'<sup>73</sup>

From this argument, then, it can be concluded that Te Runanga comply with the dictates of Negotiating Group's agenda and timetable. Decisions are not fully scrutinised, or measured up against, and checked for compliance with, tribal principles. Te Runanga endorse Negotiating Group's plans of action in order to adhere to their time frames. Runanga then find out about important decisions being made without prior consultation with their directors. This in turn precludes any runanga input and denies the organisational structure's recognition of where Ngai Tahu rangatiratanga actually belongs - with the people - as maintained in Te Kawenata o Ngai Tahu's *Kaupapa Whakakotahi*.<sup>74</sup>

Thus, from this perspective, when considering the hierarchical diagram, the internal relationships as described do not reflect reality. Iwi management working on behalf of Ngai Tahu have become the surrogate leaders. T. M. Tau maintains that O'Regan, whether reluctantly in the position or not, 'at the end of the day Steven [O'Regan] still leads. He calls the shots. He aint got no structure.'<sup>75</sup> This implies that O'Regan's leadership is still apparent, and thus, the Negotiating Group's agenda, at present, is paramount.

The implications of this situation for Ngai Tahu is that the structure designed to not only be 'accountable to the tribe itself, in the form of traditional runanga',<sup>76</sup> but led by Te Runanga which acts on behalf of all runanga is not functioning as intended. In terms of rangatiratanga Te Runanga, the 'repository of the

---

<sup>73</sup>R. Tau, Interview: 13-2-97

<sup>74</sup>Draft Charter, 1993. See Appendix 4.

<sup>75</sup>T. M. Tau, Interview: 29-1-97

<sup>76</sup>O'Regan, 1989: 260

collective tino rangatiratanga of Ngai Tahu Whanui' is being denied.<sup>77</sup> Furthermore, the rangatiratanga of runanga over affairs of importance within their takiwa is being ignored. Input by runanga to Te Runanga through their director is not operating as rigorous policy formulation by Te Runanga, often taking into account runanga perspectives, is not occurring. A beneficiary's perspective is summed up by the following statement:

**I'm looking at runanga. They are being told they are the voice of Ngai Tahu and that's where a big conflict arises because initially when I saw this structure being put up we were clearly told at our meetings...that nga runanga would hold the power. The voice of the people would be there at the top. And then it would come down to Te Runanga o Ngai Tahu and then the corporate structure came underneath. But it's flipped over. And the people at runanga level have had the power taken away from them.**<sup>78</sup>

From this runanga perspective, then, when the Ngai Tahu organisational structure is thought to be dysfunctioning, the net effect is that misgivings are now being expressed over the Te Runanga o Ngai Tahu Act (1996) as follows:

**The power has been given to Te Runanga o Ngai Tahu through the Ngai Tahu Act. But whether they actually hold the power as far as the settlement goes is something else.**

**(Later)**

**I feel that they [Te Runanga] have failed to be our voice. They have made decisions without consulting the people and allowed the power to be taken from them by another group [Negotiating**

---

<sup>77</sup>Draft Charter, 1993: 8

<sup>78</sup>Te Aika, Interview: 7-1-97

Group]. They haven't demanded accountability from that group. I think they should've....But they have tended to be bogged down by a very Pakeha system/structure that has been placed on them....I might be seeing it the wrongly, but this is the way I see it, that they have given away their power or allowed it to be taken from them as far as the negotiating for a settlement goes.<sup>79</sup>

Such misgivings are disheartening when considering that the Te Runanga o Ngai Tahu Act (1996) gave back to Ngai Tahu its legal identity. Now, the opportunity has arisen for this identity to be destroyed again, but his time, internally.

---

<sup>79</sup>Ibid.

## **CHAPTER SIX**

**The Heads of Agreement and the Differences in Approach to  
Tino Rangatiratanga**

## **An Overview of the Key Elements of the Heads of Agreement:**

In an emotionally charged ceremony, on October 5 1996, a non-binding Heads of Agreement document was signed. Signatories were Treaty Negotiations Minister, Doug Graham, and Ngai Tahu negotiators, Sir Tipene O'Regan and Charles Crofts. After 147 years and five generations of Ngai Tahu claimants fighting for redress of grievances with the Crown, a non-binding settlement in principle was agreed upon between the Crown and Ngai Tahu negotiators. Notable in his signature's absence from the document was the other Principal Negotiator and Waitangi Tribunal claimant of the Ngai Tahu Claim, Rakihia Tau.

The absence of a key player's signature may barely raise an eyebrow in the public arena, but it does point to divisions within Ngai Tahu that arise out of settling the Ngai Tahu Claim along the proposed formula of the Heads of Agreement. This formula of will be examined in the first half of this chapter. The divisions will be discussed and analysed in the latter half. Finally, the concluding section will examine the implications the Heads of Agreement has for Ngai Tahu's approach to tino rangatiratanga.

Far from being the final words of a Deed of Settlement mandated by the Ngai Tahu Whanui and ratified by Parliament, the Heads of Agreement records all matters agreed to in principle between the Crown and Ngai Tahu negotiators.<sup>1</sup> As has been emphasised at runanga hui and the 1996 Hui-a-Tau, the document is still open to negotiation and is not legally binding. Charles Crofts, Ngai Tahu B-team negotiator and Chairperson of Te Runanga, maintained (prior to the 1996 MMP election) that Ngai Tahu are now positioned to continue negotiations with the Crown regardless of the shape of the new government.<sup>2</sup> Evidence of

---

<sup>1</sup>Whanui describes the collective of Ngai Tahu beneficiaries

<sup>2</sup>Ngai Tuahuriri Runanga hui: 1-10-96

the Heads of Agreement's non-binding nature has already occurred in Ngai Tahu's proposal to review the settlement's quantum when the new coalition government announced it would drop the one billion dollar fiscal cap.<sup>3</sup> Following this, negotiations continued between the Crown and Ngai Tahu throughout the majority of 1997 drawing up the legal detail for an impending settlement.

Within the Heads of Agreement formalities to be included in a Deed of Settlement is a full, formal, public apology from the Crown in both Maori and English. O'Regan stated that 'there will be an apology and full recital of all the relevant sins.'<sup>4</sup> The apology the Crown will admit that it 'acted unconscionably and committed repeated breaches of the Treaty of Waitangi...[and] express profound regret.'<sup>5</sup>

For Ngai Tahu's part, there would have to be the acknowledgment that 'the Crown has acted honourably and reasonably and the settlement is fair and final.'<sup>6</sup> For many Ngai Tahu, this acknowledgment includes the most controversial statement in the Heads of Agreement that a settlement would be considered 'a comprehensive, full and final settlement of Ngai Tahu's historical claims.'<sup>7</sup> This means that, on enactment of a Deed of Settlement, all historical grievances based on loss prior to September 21 1992 'whether or not the claims have been researched, registered or notified' are extinguished.<sup>8</sup> These include customary rights which were breached or remain directly uncompensated by the

---

<sup>3</sup>*The Press*: 14-12-96

<sup>4</sup>Keene, *The Press*: 5-10-96

<sup>5</sup>Heads of Agreement Summary, 1996: Nov.

<sup>6</sup>Heads of Agreement, 1996: 25

<sup>7</sup>*Ibid.*

<sup>8</sup>*Ibid*: 21. Claims lodged that deal with breaches after September 21 1992 (even if they are Sept. 22 1992) are considered contemporary claims. The significance of this date is due to the Treaty of Waitangi (Fisheries Claim) Settlement Act (1992) coming into force on this day. The thinking was that the Government, by using this date as the cut-off point for historical grievances, could then off-set the value of the fisheries settlement (approximately \$170 million) against the fiscal envelope (Crown Proposals, 1994: 9). This date is irrelevant now that the fiscal cap has been removed.



Crown in individual deed areas from the land purchases last century. Such grievances are to be redressed by the collectivised Ngai Tahu settlement and the benefits arising out of this. The right of any Ngai Tahu claimant seeking redress for historical loss will be removed. However, this does not include claims related to language or culture.

Furthermore, the jurisdiction of the Waitangi Tribunal, or any other redress arena, will be removed so as to prevent a review of the settlement legislation relating to its validity and adequacy of redress. Finally, the upshot of the extinguishment of rights will be that, not only will all Ngai Tahu claims prior to September 21 1992 be considered settled, but the Crown will be deemed 'released and discharged' from any duty of redress for historical claims.<sup>9</sup>

It must be added, however, that the Heads of Agreement maintains that the settlement does not 'diminish or in any way affect the Treaty of Waitangi or any of its articles or the ongoing relationship between the Crown and Ngai Tahu in terms of the Treaty or undermine any rights under the Treaty of Waitangi including rangatiratanga rights.'<sup>10</sup> Thus, the Ngai Tahu's right to defend customary rights from September 21 1992 against future breach has been protected in the Heads of Agreement.

Under a settlement Ngai Tahu receives a quantum of \$160 million. This is offset against an earlier payment of \$10 million on-account which was paid to Ngai Tahu on June 17 1996. According to Treaty Negotiations Minister, Doug Graham, this was in demonstration of the Crown's goodwill to negotiate a

---

<sup>9</sup>Ibid: 22. An entrenched Treaty of Waitangi would prevent the legality of such a clause. The right of a Ngai Tahu New Zealander to go to court would be safeguarded.

<sup>10</sup>Ibid: 23. Rangatiratanga rights referred to by the Crown means those ongoing rights guaranteed by the Treaty. Rangatiratanga is defined in terms of ownership of assets rather than an exhaustive definition that includes spiritual and individual dimensions as referred to in Chapter 2.

settlement.<sup>11</sup> The interim settlement, as it became known, also provided that the Crown vest in Ngai Tahu all pounamu, greenstone, on the West Coast and the Tutaepatu Lagoon at Woodend, North of Christchurch.<sup>12</sup>

A more cynical view of the interim settlement would suggest that, rather than a show of the Crown's goodwill, it was an effort to prevent adverse publicity condemning Crown actions and the ensuing public outcry.<sup>13</sup> The \$10 million was used to persuade Ngai Tahu to suspend court proceedings against the Crown and resume negotiations. The case of *Tau v Durie* (Durie is chairperson of the Waitangi Tribunal), pending on June 17, might have exposed collusion between Durie and a Crown Minister to the disadvantage of Ngai Tahu. This could have highlighted the Crown's apparent lack of separation of powers between the judiciary and legislature, so the Crown was keen to have the case suspended, at a price, and negotiate.<sup>14</sup>

Within the Heads of Agreement two settlement mechanisms were outlined on which the quantum could be spent. The first, and probably the more valuable, is the Deferred Selection Procedure (DSP) valid for only 12 months after the settlement legislation is enacted, and is limited to an agreed list of Crown assets. These assets are not surplus assets but are of current value to the

---

<sup>11</sup>Iosefa, *The Press*: 18-6-96

<sup>12</sup>The Tutaepatu Lagoon is wahi tapu, or, a place held in reverence according to tribal custom and history (Tau and Goodall et al., 1990: 4.25) for Ngai Tahu. Part of the old lagoon was a major urupa once adjoining Kaiapoi Pa.

<sup>13</sup>This cynical view is justified, as O'Regan at the Hui-a-Tau maintained, one can never rely on the Crown to do a certain action because its honourable, it always has to be enforced (Korero: 23-11-96). This opinion was undoubtedly formed from the numerous battles O'Regan has been involved in with the Crown and on behalf of Ngai Tahu.

<sup>14</sup>O'Regan, Lecture: 27-5-96. The separation of powers between the legislature and judiciary is crucial in order to maintain the principle of the impartiality of the law. This principle lies at the very foundation of the legal system (Harris, 1989: 35). The separation of powers is discussed in Appendix 5.

*Tau v Durie* is still lodged with the High Court as an insurance measure should negotiations fail (R.Tau, Interview: 13-2-97). With the draft Deed of Settlement under way the case is less likely to be used. If Ngai Tahu choose to renegotiate the case still exists. However, the political leverage Ngai Tahu may have had having this case pending before the election would not be as great.

Crown. Thus, their actual worth is known. Ngai Tahu can spend up to \$200 million (\$170 million from the quantum and interim settlement and up to \$30 million of its own funds) purchasing these assets at market value.

The second mechanism is the Right of First Refusal (RFR) which is already in operation and has been used in purchases such as the Wigram Airbase. This mechanism gives Ngai Tahu the right of first refusal to largely surplus Crown assets within the Ngai Tahu rohe. RFR is in operation in perpetuity.

The Heads of Agreement maintains that a Deed of Settlement will provide a relativity clause, which means that if the \$1 billion cap is adjusted up or removed, Ngai Tahu will receive top-up payments onto its \$170 million quantum. This appears to inherently accept the fiscal envelope after Ngai Tahu's public rejection of it in 1995. Fears that Ngai Tahu has accepted the fiscal envelope are increased by reports that the former 'Government is managing to keep within its controversial fiscal envelope policy.'<sup>15</sup> Since the announcement of the new coalition government's policy to remove the fiscal cap, and Ngai Tahu's publicised desire to now review the quantum, this clause may already be proving useful.

As outlined by the Heads of Agreement, Ngai Tahu successfully negotiated other government concessions. These were, first, title to the Lake Wakatipu High Country Stations: Elfin Bay, Greenstone and Routebourne. These come with a number of qualifications, however, such as gifting certain areas back to the Crown due to their 'high conservation values.'<sup>16</sup>

---

<sup>15</sup>Keene, *The Press*: 5-10-96

<sup>16</sup>Heads of Agreement Summary, 1996: Nov. This qualification may be illustrating a more general malaise in New Zealand society with regards to Maori and conservation. At a public meeting with Treaty Negotiations Minister, Doug Graham, members of the public were invited to discuss recreational and conservation issues relating to the proposed settlement of Ngai Tahu's historic Treaty claims. This meeting was also attended by Principal Negotiators, O'Regan and R.Tau. The more outspoken members of the public were mainly from interest

Second, Ngai Tahu receives freehold title (ownership) to Rarotoka (Centre Island) and the Crown Titi Islands. A Deed of Recognition for Whenua Hou (Codfish Island) will be granted to Ngai Tahu, giving them access to, and management of, this Island but not the title.

Briefly, other matters addressed in the Heads of Agreement were: the ownership of the Arahura Valley granted to Ngai Tahu, mahinga kai entitlements, formal recognition of Ngai Tahu place names such as Aoraki, Ngai Tahu membership on conservation boards, and the finalisation of the 33 ancillary claims for inclusion in the Deed of Settlement. The ancillary claims are largely where individuals have lodged claims as part of the Ngai Tahu Claim.

Altogether Crown transfers of the conservation estate add up to approximately 630 hectares. This figure does not include lake beds and riverbeds or the high country stations. In his address to the public meeting discussing conservation issues (referred to in footnote 16), Doug Graham stated that 'those people who thought it would be thousands and thousands of hectares are wrong.'<sup>17</sup> In reality, Ngai Tahu are receiving small isolated pockets of land due to their traditional/cultural and spiritual significance. In this respect, then, the Heads of Agreement provides an amount of certainty and dispels any public fears that Ngai Tahu will receive vast tracts of land (including private) as part of a settlement. Such erroneous public beliefs, such as the aforementioned, directly contradict how Ngai Tahu/Crown negotiations are conducted. As has already

---

groups such as the Forest and Bird Protection Society. These groups expressed concern about Ngai Tahu's 'ability' to protect native flora and fauna. These concerns seemed particularly ironic. Ngai Tahu responded by asking the question of why ethnic arrogance pervades many in these conservation societies who believe, judging by the concerns raised, that 'only conservation people understand conservation' (R.Tau, Korero: 18-9-96). R.Tau pointed out that it was Pakeha farmers who originally destroyed the high country and not Ngai Tahu who had been practicing conservation in mahinga kai techniques for centuries prior.

<sup>17</sup> *The Press*: 19-9-96

been mentioned, O'Regan made it clear at the 1996 Hui-a-Tau, that any concessions Ngai Tahu receive are not through the Crown's honour, but as a result of being forced, regardless of the righteousness of the concession.<sup>18</sup>

A requirement within the Heads of Agreement is for Te Runanga, as representatives of Ngai Tahu, to obtain a mandate to settle from the Ngai Tahu Whanui. In order to achieve this mandate, Te Runanga has currently undertaken a six stage consultative process provided in its own summary document of the Heads of Agreement. The document is outlined by the following:

Stage 1. On November 2-3, 1996, Runanga representatives and alternates of Te Runanga met to discuss the Heads of Agreement in an extraordinary general meeting. The Te Runanga directors received the lengthy document during this hui and resolved that:

**1. The Heads of Agreement dated October 5 1996, signed by Sir Tipene O'Regan, the Chairman of Ngai Tahu Negotiating Group, on behalf of TRONT, and the Hon. Doug Graham, Minister in charge of Treaty of Waitangi Negotiations, on behalf of the Crown, be ratified.**

**2. The Ngai Tahu Negotiating Group be authorised to enter into formal negotiations with the Crown to settle the terms of the Deed of Settlement of the Ngai Tahu Claims.<sup>19</sup>**

---

<sup>18</sup>O'Regan, Korero: 23-11-96

<sup>19</sup>Resolution fax: 11-11-96

Ngai Tuahuriri Runanga members received notification of the ratification of the Heads of Agreement by Te Runanga, which occurred on November 2-3, a week later on November 11. This was by way of a Resolutions fax circulated by the Deputy Upoko of the Runanga, Rakiihia Tau. The dissemination of this information was only made possible by virtue of R. Tau's position within the Ngai Tahu structure as Principal Negotiator. The rest of Ngai Tahu found out some time later that the Ngai Tahu Negotiating Group and Te Runanga were already at stage 2.

Stage 2. The Ngai Tahu Negotiating Group (Negotiating Group) and Crown negotiators will take the Heads of Agreement to settlement stage by drafting a Deed of Settlement.<sup>20</sup>

During the 1996 Hui-a-Tau, held over the weekend of November 22-24, Ngai Tahu members were given the rationale by the Negotiating Group for Te Runanga's ratification of the Heads of Agreement. This was also an opportunity for the Negotiating Group to present its preferred option to Ngai Tahu members, that is, the acceptance of the Heads of Agreement.

Stage 3. This is when the final contents of the Deed of Settlement will be accepted by the Ngai Tahu negotiators and the Crown. Formal negotiations between Ngai Tahu and the Crown will have been completed. The Deed will be taken on a 'roadshow' throughout the North and South Islands for consideration by members of Ngai Tahu.

Stage 4. Each of the approximately 16,600<sup>21</sup> registered Ngai Tahu members will be posted information covering the essential elements of the Deed.

---

<sup>20</sup>Heads of Agreement Summary, 1996: Nov.

<sup>21</sup>MacFie, 1997: 100

Stage 5. Every registered Ngai Tahu member (18 years and over) will cast a postal vote for or against the Deed of Settlement.

Stage 6. Te Runanga will consider the Deed of Settlement taking into account the results of the postal ballot and any feedback from the roadshows as reported by the Negotiating Group. Te Runanga will then make the final decision as to the acceptability of the Deed.<sup>22</sup>

### **Divisions Arising from the Heads of Agreement:**

As a result of the 1996 Hui-a-Tau weekend and participant observation at Ngai Tuahuriri Runanga hui, I have identified two distinct camps which favour different settlement alternatives.<sup>23</sup> These two camps exist in an antagonistic relationship within Ngai Tahu at present. One camp, the negotiation camp, favours a negotiated settlement which provides for a collectivised redress of beneficial rights to the Ngai Tahu Claim. The core of the Ngai Tahu organisational structure are in this camp. Naturally, with the backing of the tribal parliament (Te Runanga), iwi management, Principal Negotiator and visionary leader - Sir Tipene O'Regan - this camp is prevailing. By this I mean that the Ngai Tahu organisational structure is fully resourced towards, and currently working on, a draft Deed of Settlement with the Crown.<sup>24</sup>

The other camp favours renegotiating with the Crown to establish direct remedies for each of the ten deed areas in which the Crown breached contract last century. Ngai Tahu beneficial rights, that is, the right of Ngai Tahu individuals to benefit, are directly addressed according to the Ngai Tahu Claim

---

<sup>22</sup>Heads of Agreement Summary, 1996: Nov.

<sup>23</sup>I am aware that not all Ngai Tahu align to a specific camp I have identified. Some may align to either depending upon which point is at issue. In the absence of a survey of all registered Ngai Tahu members, these are my general observations.

<sup>24</sup>Smith, *Christchurch Mail*: 27-1-97

area in which they belong. If renegotiation breaks down, then the option of litigation will be taken up. In this case, a deed (or deeds) of settlement under court order with the Crown will take place. For ease of reference I refer to this camp as the litigation camp. Within each of the ten deed areas beneficial rights align to specific runanga, which form from a hapu or a number of hapu within its takiwa. Runanga represent the hapu conglomerate and act in the interests of its beneficiaries. In this camp are a number of individual runanga beneficiaries, that is, the 'flax root' Ngai Tahu.<sup>25</sup> Support for this camp comes from the other Principal Negotiator, Upoko of Ngai Tuahuriri and 'Father of The Claim',<sup>26</sup> Rakiihia Tau. These two camps identified are ones I have artificially created to enable the conceptualisation of two dominant perspectives in Ngai Tahu.

In an article released in July this year by *North and South* magazine findings were generally similar to the major divisions within Ngai Tahu identified above. This article distinguishes between those who support the negotiated settlement along the lines of the Heads of Agreement, and those who would rather prosecute the claim through the courts. Supporters (who I have named the negotiation camp) regard that the Heads of Agreement proposals, as stated by O'Regan, as a 'sufficient foundation on which to build a future.'<sup>27</sup> Detractors (the litigation camp) regard that the Heads of Agreement proposals are inadequate in terms of utu, or remedy, brought to bear on the Crown and demand litigation for a just outcome.<sup>28</sup>

Immediately represented in these two camps are the opposing views of the Principal Negotiators, O'Regan and R. Tau. Each has a differing philosophy with respect to rangatiratanga, and each can claim they have as much right on their

---

<sup>25</sup>O'Regan, Korero: 21-9-96

<sup>26</sup>Te Aika, Interview: 7-1-96

<sup>27</sup>McFee, 1997: 100

<sup>28</sup>Ibid.



side as the other. For O'Regan his approach is coloured by the notion that rangatiratanga must now take into account the reality of the surrounding circumstances of modern New Zealand society. This includes using modern circumstances, such as New Zealand's market economy, to Ngai Tahu's advantage where possible. For R. Tau, while wanting to embrace the realities of a modern society, believes that actions of the centralised Ngai Tahu structure must still observe tikanga, or traditional Maori law. Such fundamental differences divide these two camps.

An illustration of the divisions arising over the Heads of Agreement are outlined in this section. These divisions indicate the existence of differing approaches to tino rangatiratanga in Ngai Tahu which are analysed in the final section of this chapter.

A major issue of division is the issue of the extinguishment of beneficial rights. The negotiation camp represents the collectivised beneficial rights of Ngai Tahu iwi. It defines a Ngai Tahu beneficiary as anyone who can 'trace at least one line of descent back to one of the original kaumatua alive at the time of 1848', in other words, has Ngai Tahu whakapapa.<sup>29</sup> Armed with this definition, which is inclusive of all Ngai Tahu members, the negotiation camp negotiated the Heads of Agreement with the Crown for the collective benefit of Ngai Tahu iwi.<sup>30</sup> Distinctions are not made according to the relative loss of particular hapu, as proven by the Waitangi Tribunal, nor are losses compensated directly. For example, the losses Ngai Tuahuriri incurred for the land the Crown failed to set

---

<sup>29</sup>Caldwell, Whakapapa: 3

<sup>30</sup>The collective ownership of assets reminds me of Hardin and Baden's (1977) argument behind the 'The Tragedy of the Commons', and aligns to the fears of some Ngai Tahu. This is where property held in common is not looked after by anyone. Translated into the current fears of some Ngai Tahu, if there are no clearly defined lines of allocation of the putea, or tribal assets, then it is more likely to be mismanaged. Mismanagement in this context would be to the benefit of Ngai Tahu's management sector rather than the beneficiaries.

aside between the Waimakariri and Kawari Rivers receives no direct compensation.

If and when a settlement is achieved, it will extinguish all claims 'founded on rights arising in or by the Treaty of Waitangi, the principles of the Treaty of Waitangi, statute, common law (including customary law and aboriginal title), fiduciary duty or otherwise' prior to September 21 1992.<sup>31</sup> Possibility for direct redress for Ngai Tahu claims of beneficiaries relating to specific runanga, such as Wairewa and Ngai Tuahuriri, though proven in the Waitangi Tribunal, will thus be extinguished.

Claims by specific runanga will be redressed indirectly by the \$170 million quantum. As mentioned at the 1996 Hui-a-Tau by Claims Manager, Anake Goodall, once the quantum is at their disposal, it will then be up to Ngai Tahu's internal structures to 'sort out an equitable allocation' for runanga.<sup>32</sup> This process then has the possibility of taking into consideration the relative losses of each runanga. The form in which the allocation of compensation will take place is unknown at this stage. On the understanding that the quantum will be used to purchase Crown assets, via the settlement mechanisms, compensation may take the form of an allocation of shares to each runanga.<sup>33</sup> There is also the likelihood of grants to runanga beneficiaries who apply to the social development arm of Te Runanga, thus keeping much the same allocation system that exists at present.

The negotiation camp gives priority to the common good of the iwi rather than individual beneficiary interests. At the 1996 Hui-a-Tau Goodall maintained that Ngai Tahu 'ten or fifteen years ago agreed that the Claim would be run as a

---

<sup>31</sup> Heads of Agreement, 1996: 21

<sup>32</sup> Goodall, Korero: 23-11-96

<sup>33</sup> T. M. Tau, Interview: 29-1-97

tribal claim...ruling out deed by deed compensation.<sup>34</sup> One reason for this is a practical one: due to multi-hapu, and thus runanga, affiliation of many Ngai Tahu members 'iwi is the only thing you can get a ring around.'<sup>35</sup> By this reasoning, individuals' whakapapa often cross the boundaries of various hapu, thus complicating compensatory measures for runanga beneficiaries.

A fear O'Regan has spoken about on various occasions, which also sheds light on why he rejects direct settlement compensation to beneficiaries, is the plight of an Alaskan tribe. After this tragic settlement, in only 7 years \$16.8 billion was whittled away due to tribal division leading to separate investments.<sup>36</sup> This Alaskan experience supplies O'Regan with proof that if there is a loss of cohesion within the tribe there is also a loss of money. More importantly, the vision of new potential for the tribe is lost. Thus, O'Regan admits that he is 'scared about what building can be done...[as there is] never more opportunity but never more risk.'<sup>37</sup>

For the litigation camp, beneficial rights exist by virtue of those handed down by one's parents and, before them, tipuna. They are inherited property rights giving interests in a certain area (or areas) of land. These rights give one turangawaewae, or speaking rights on the marae by virtue of property ownership in the hapu takiwa. Like the property rights Pakeha are familiar with, beneficial rights lodge in the senior members of a whanau, such as the parents. They are owned by the parents until death at which time they are passed on to their children who then hold the beneficial rights. A number of whanau can hold beneficial rights in an area of land as whakapapa nets, or family trees, naturally spread. Thus, rather than a Ngai Tahu beneficiary being defined as any person

---

<sup>34</sup>Goodall, Korero: 23-11-96

<sup>35</sup>O'Regan, Korero: 23-11-96

<sup>36</sup>O'Regan, Korero: 15-9-96; 23-11-96.

<sup>37</sup>Ibid: 21-9-96

who can whakapapa back to an 1848 kaumatua, as defined by the negotiation camp, beneficial rights are dependent on inherited property ownership in a certain runanga takiwa. This definition is exclusive. As maintained by R. Tau, some kaumatua in 1848 had no ownership rights in deed areas. Hence, their descendants also have no property rights. The litigation camp's definition of a beneficiary was given at Ngai Tahu's Waitangi Tribunal hearing in R. Tau's statement of claim.<sup>38</sup>

Whether renegotiating the Ngai Tahu Claim or taking it to court to settle deed by deed area using the findings of the Waitangi Tribunal, runanga beneficiaries receive direct redress for their losses. Beneficial rights are not collectivised and equalised but redressed according to the merits of each set of beneficiary cases as presented by runanga. The beauty of litigation, if resorted to, is that all mechanisms used to reach a certain finding are transparent and spelt out. This is unlike negotiations, where deals may be struck, in what appears to those outside the Negotiating Group to be ambiguous ways. With favourable findings for the benefactors, justice in court can be seen to be done. Loss in terms of property rights are quantifiable for this purpose, so those beneficiaries who suffered greater property losses will receive more compensation than those who suffered less property loss.

In answer to the negotiation camp's argument of the common good, the litigation camp asks 'can an individual who has no rights in a certain area extinguish the rights of beneficiaries who do?'.<sup>39</sup> To this question the litigation camp answer with an emphatic 'no.' The situation where non-beneficiaries to a certain area extinguish beneficiary rights within that area will prevail if Ngai Tahu reach a

---

<sup>38</sup>R. Tau, Interview: 13-2-97

<sup>39</sup>Ibid., Korero: 18-11-96

settlement along the lines of the Heads of Agreement. Settlement involving collectivised beneficial rights for the common good can not do otherwise.

Postal voting for every Ngai Tahu member will bring this concern of the litigation camp into fruition. Not only will beneficiaries be able to vote in areas where they possess no ownership rights, but Ngai Tahu members who do not have ownership rights to any area will be able to vote on a settlement. In R. Tau's estimation, and in that of other beneficiaries, it is offensive that non-owners to a certain deed area can vote to extinguish rights of owners. As he stated, this situation is 'undemocratic, unconstitutional and contrary to Treaty principles.'<sup>40</sup> R. Tau maintains that for a just settlement there needs to be a remedy applied to the specific deed area. Beneficiaries to the deed area should then be able to vote on whether the remedy is acceptable or not. Thus, rights of individual beneficiaries to the appropriate deed area are expressed and not infringed upon.<sup>41</sup> Ngai Tahu iwi cannot give away the rights of beneficial owners, allowing non-owners to vote, when these rights do not belong to the iwi but to the individual.

For the litigation camp, the Heads of Agreement will do what the Sealord Deal did in relation to beneficiary rights. One reason why R. Tau refused to sign the Heads of Agreement harks back to his signing of the Sealord Deal, which he now regards as a mistake.<sup>42</sup> It collectivised beneficial rights into a pan-Maori settlement (the Heads of Agreement is pan-hapu, but the parallel is clear), extinguishing the rights of individual beneficiaries. Now Ngai Tahu beneficial rights to commercial fishing assets are tied up in court due to the ensuing distribution battles between Ngai Tahu, some northern iwi and Urban Maori

---

<sup>40</sup>Ibid., Interview: 13-2-97

<sup>41</sup>Ibid.

<sup>42</sup>Ibid., Korero: 24-11-96

Authorities (UMAs).<sup>43</sup> Even though the Heads of Agreement is pan-hapu, R. Tau refuses to make the same mistake twice.

Another source of division is the settlement quantum of \$170 million. Through breaches of contract which ended in Ngai Tahu losing approximately 1.38 million hectares 'estimates have put the loss to the tribe...at \$20 billion.'<sup>44</sup> It was conceded by the negotiation camp on a number of occasions that the value of the agreement is not just.<sup>45</sup> Justice would mean the Crown compensating '\$16-\$20 billion.'<sup>46</sup> The negotiating camp accept, however, that \$170 million *is* a 'sufficient base to build upon...[and] it's as good as we're going to get.'<sup>47</sup> O'Regan himself concedes that he 'hates giving up on utu but wants Ngai Tahu to have a future.'<sup>48</sup> As has already been stated by Te Runanga Chairperson, C. Crofts, 'only a fool would suggest they [the full value of the tribe's losses] should be met. We have no wish to bankrupt or damage the society and economy in which we want to prosper.'<sup>49</sup>

The negotiation camp's vision of the future for Ngai Tahu is, as stated by O'Regan, 'to recapitalise my tribe within its own landscape', win sufficient compensation from the Crown...in order to rebuild the tribe's economic base.'<sup>50</sup> Thus, developing a sustainable base for the social development of the iwi and its members. This vision is not only one for the future but a means of survival at present. As mentioned above Ngai Tahu is embroiled in a battle with some northern iwi and UMAs over the distribution of fisheries assets, most of which

---

<sup>43</sup>The distribution battles in court between iwi in the wake of the Sealord Deal may be foretelling the distribution battles in court Te Runanga may face without clear methods of allocation to runanga and beneficiaries.

<sup>44</sup>Keene, *The Press*: 5-10-96

<sup>45</sup>Mead, Korero: 23-11-96; Goodall, Korero: 23-11-96; O'Regan, Korero: 23-11-96

<sup>46</sup>O'Regan, Korero: 23-11-96

<sup>47</sup>Ibid.

<sup>48</sup>Ibid.

<sup>49</sup>Keene, *The Press*: 20-4-95

<sup>50</sup>Brett, 1992: 59

exist in the Ngai Tahu rohe. The High Court has ruled in favour of allocation according to a traditional tribal property basis, as Ngai Tahu argued, as this is consistent with the Treaty. However, if the UMAs appeal against this decision for a population basis of allocation succeeds, this would mean Ngai Tahu would lose the majority of fisheries assets within its own rohe. Recapitalisation of Ngai Tahu within its own landscape would be that much harder to achieve.

At the 1996 Hui-a-Tau, O'Regan argued that if Ngai Tahu owns its own assets the future is secure for building and developing the iwi economically, and thus, socially. This is so even though Ngai Tahu are a minority in New Zealand and in Maoridom.<sup>51</sup> Greater freedom of choice exists when one owns one's assets and dependency on another's, such as the Crown's, is cancelled out. Ngai Tahu's future is insecure without ownership of its own assets as it will be unable to deliver social benefits to its people. With the \$170 million enabling Ngai Tahu to purchase Crown assets, Ngai Tahu's future ability to supply social benefits will be more secure. This would be so even if most of the fishing assets are lost through the UMAs appeal.

The litigation camp opposes, not future vision and benefits Ngai Tahu can win through compensation, but the amount of compensation that is being accepted. After 147 years of struggling to seek a just settlement to the Claim, all Ngai Tahu has been able to win is a deal worth \$170 million that Negotiating Group admits is not just. As stated by Ngai Tuahuriri beneficiary Mahara Te Aike, 'Our ancestors fought for justice. Now we have to accept an agreement that is acknowledged as unjust...I feel cheated, disillusioned and angry.'<sup>52</sup> As R. Tau has indicated at Ngai Tuahuriri hui, the \$170 million quantum (the interim settlement plus the major settlement) was accepted by Te Runanga and

---

<sup>51</sup>O'Regan, Korero: 23-11-96

<sup>52</sup>Te Aike, Interview: 7-1-97

O'Regan in approximately July of 1996. Though R. Tau is a Principal Negotiator, he was not privy to this information until after the fact.<sup>53</sup> This quantum was fixed and the Heads of Agreement drawn up around the quantum. R. Tau maintains that once the quantum was set, the rest of the Ngai Tahu settlement was tied into its fixed amount.<sup>54</sup> This means that compensation for individual deed areas would either be collectivised and redressed indirectly, as is the case at present, or if deed areas were redressed directly, compensation for all ten would fall within the \$170 million. Estimates have put Ngai Tuahuriri losses alone (minus potential for economic gain) at approximately \$1.3 billion.<sup>55</sup>

To this end, then, the litigation camp feels a settlement closer to justice can be won through renegotiating and going to court even recognising that \$20 billion can never be awarded. The negotiating camp themselves admit that more economic compensation might be won via litigation. However the risk with litigation is the possibility that less economic compensation may also be awarded.<sup>56</sup> In fact, this is the great advantage the negotiation camp has over the litigation camp: It already has a known quantity through the Heads of Agreement. If the claims of various runanga go to court and the Heads of Agreement lapses, Ngai Tahu will lose the lucrative settlement mechanisms, mahinga kai redress on the Crown owned Islands (Rarotoka, Whenua Hou and the Titi Islands), and redress to the ancillary claims.<sup>57</sup> Court settlements may prove to be of greater economic value, but the risk is they may also prove to be less. Redress for taonga, mahinga kai and other cultural values will be unknown.

---

<sup>53</sup>R. Tau, Korero: 4-8-96; 16-2-97.

<sup>54</sup>Ibid: 16-2-97

<sup>55</sup>Ibid: 11-11-96

<sup>56</sup>Mead, Korero: 23-11-96

<sup>57</sup>The Heads of Agreement may lapse after 6 months at which time 'the parties [Ngai Tahu and the Crown] will jointly review the continued operation' (Heads of Agreement, 1996: 8). For Ngai Tuahuriri, it was argued that the ancillary claims do not redress their grievance of land not set aside between the Waimakariri and Kawari Rivers anyway (Hui: 16-2-97).



Divisions between the two camps also focus on the fiscal envelope with its billion dollar cap to settle all Maori Treaty of Waitangi claims. The litigation camp accuses the negotiation camp of selling out and accepting the fiscal envelope. The negotiation camp claim they 'have not buckled on one dimension' of Ngai Tahu's rejection of the policy.<sup>58</sup>

During the consultation round ministers of the Crown held fiscal envelope hui around New Zealand. Ngai Tahu's hui was at Tuahiwi Marae, and there the fiscal envelope was openly rejected. Primarily, Ngai Tahu rejected the fiscal envelope for its principle of relativity where compensation was to be 'consistent and equitable between claimant groups.'<sup>59</sup> The rationale for the rejection of this principle was 'how does the Crown relate to the huge scale of the deprivation of the Ngai Tahu tribe of the South Island, which had millions of acres taken by the stroke of a pen, with the one million acres confiscated from Tainui at the barrel of a gun?'.<sup>60</sup> O'Regan asserted at the 1996 Hui-a-Tau, that Ngai Tahu still reject historical comparison of loss between iwi imposed by the fiscal envelope. How can the Crown maintain that land taken by gun was somehow worse than if it was taken by fraud?<sup>61</sup> In other words, how can the historical grievances of the Ngai Tahu Claim be compared to those of the Tainui Claim?

It is argued by the negotiation camp that the Ngai Tahu settlement deal makes the fiscal envelope and its billion dollar cap 'irrelevant'.<sup>62</sup> Although \$170 million is used to publicly describe the value of the quantum, its actual worth is much more. The public quantum does not take into account the potential value of the settlement mechanisms, that is, the RFR and DSP. These will push the value of the quantum far beyond \$170 million.

---

<sup>58</sup>O'Regan, Korero: 23-11-96

<sup>59</sup>Gardener, 1996: 34

<sup>60</sup>Ibid.

<sup>61</sup>O'Regan, Korero: 24-11-96

<sup>62</sup>Ibid.

It was published in *The Press* that 'the agreement is on a par with the other big settlement achieved so far - the Tainui settlement also worth \$170 million.'<sup>63</sup> This is an inaccurate statement according to the negotiation camp's argument as Ngai Tahu's settlement deal is worth far more than Tainui's. According to O'Regan, Tainui has no RFR mechanism which Ngai Tahu have in perpetuity. Tainui must also purchase Crown assets from a limited list with set valuations. The DSP and RFR mechanisms are far more flexible. Furthermore, O'Regan argued that for proof of the value of the settlement mechanisms one only needs to look at how Pakeha made wealth out of Ngai Tahu. It was through the Treaty's preemption clause which gave the Crown a monopoly on buying Ngai Tahu lands. The Crown had an RFR mechanism written into the Treaty. Now Ngai Tahu have the opportunity to use the RFR mechanism to their benefit. Thus, the historical impact of last century's land losses are revisited on the Crown, but this time the Ngai Tahu purchasers are acting within the law.

The negotiation camp argue that they have proved themselves more than capable of maximising the benefits offered by the settlement mechanisms. Ngai Tahu's investment management record speaks for itself. In 1990 Ngai Tahu's net worth was approximately \$100,000. Through business competency, Ngai Tahu's net worth at the close of 1996 was well over \$30 million.<sup>64</sup> That was built out of Ngai Tahu's own funds with no outside funding assistance.<sup>65</sup> Thus, at the 1996 Hui-a-Tau it was urged that the Ngai Tahu Whanui have trust in the people whose job it is to drive investment and development.

---

<sup>63</sup>Keene, *The Press*: 5-10-96

<sup>64</sup>This assertion is substantiated by Ngai Tahu's financial report for 1996 (Te Runanga o Ngai Tahu Annual Report, 1996: 33).

<sup>65</sup>O'Regan, *Korero*: 23-11-96

The litigation camp argues that, no matter how the negotiation camp choose to justify their acceptance of \$170 million, it still falls within the rejected fiscal envelope. By signing the Heads of Agreement Ngai Tahu is actually validating it. Proof that this is so is highlighted by the relativity clause in the Heads of Agreement. The negotiation camp maintains that the relativity clause is a mere insurance measure where Ngai Tahu does not lose out, in regards to the value of the quantum, for settling now rather than later. By having the relativity clause, no advantage will be gained through waiting for the fiscal cap to be raised or removed altogether. Now that the Coalition Government have removed the fiscal cap, C. Crofts has maintained that Ngai Tahu want to renegotiate the quantum.<sup>66</sup> If a renegotiation does not occur and the Heads of Agreement as it stands becomes an accepted Deed of Settlement, the relativity clause will come into effect. However, as argued by the litigation camp, the relativity clause is working within the fiscal envelope boundaries and, thus, highlights its inherent acceptance by the negotiation camp. This was another reason why R. Tau did not sign the Heads of Agreement.

A further area of division involves the consultation process. For the litigation camp, the key principles in the Heads of Agreement involved no consultation with the Ngai Tahu Whanui, who are meant to be the primary benefactors of the settlement. The Heads of Agreement, although promoted as only 'a bus stop on the way to accepting a settlement' by the negotiating camp, forms the core principles of a Deed of Settlement.<sup>67</sup> None of the core principles in the Heads of Agreement were debated by runanga before it was signed. Furthermore, Te Runanga did not deliberate on the Heads of Agreement before it was signed. The Heads of Agreement was presented to Ngai Tahu Whanui as signed and

---

<sup>66</sup>*The Press*: 14-12-96

<sup>67</sup>C. Crofts, Korero: 23-11-96

sealed principles. O'Regan and C. Crofts had signed the Heads of Agreement before Te Runanga and runanga had full knowledge of its contents.

There are possible explanations why there was such a hurry to sign the Heads of Agreement. Even Principal Negotiator, R. Tau, has 'no idea' why there was a rush given the importance of the *take*, or issue, to Ngai Tahu. In his view, all the rush has achieved is tying Ngai Tahu into the fiscal envelope which was still in operation when the Heads of Agreement was signed.<sup>68</sup>

One obvious reason for the hurry was getting an agreement on the table before the uncertainties of the MMP election swept through the country. The election fell exactly a week after the Heads of Agreement was signed. On this point, R. Tau recalls that he maintained in letters to his colleagues that MMP would create an environment more responsive to settlement negotiations.<sup>69</sup> The evidence suggests R. Tau was correct for the fiscal cap no longer exists.

Another reason was that the Negotiating Group, the mandated negotiators, achieved an agreement in accordance with their goal of reaching a general settlement before the election. This goal had been discussed at a Te Runanga hui months prior.<sup>70</sup> Although the Negotiating Group effectively reached their goal, one criticism levelled at this achievement was that it illustrated a 'classic case of bureaucracy driving things because that's their mandate.'<sup>71</sup> In this view, then, the momentum of the bureaucracy within Ngai Tahu to reach a deadline came at the expense of effective deliberations from Te Runanga and runanga consultation before signing the Heads of Agreement.

---

<sup>68</sup>R. Tau, Interview: 13-2-97

<sup>69</sup>Ibid.

<sup>70</sup>Goodall, Korero: 18-5-96

<sup>71</sup>T. M. Tau, Interview: 29-1-97

The litigation camp argued that, although there is no actual statement in the Te Runanga Charter or Te Runanga o Ngai Tahu Act (1996) where it is maintained that Te Runanga will enter into deliberations before any settlement document is signed, it can be inferred that this would be the appropriate strategy. The Charter states under 3. Objects (b) that Te Runanga is 'the representative of the collective interest of Ngai Tahu Whanui and the legal representative in relation to that collective interest.'<sup>72</sup> In a settlement deal the collective interest of Ngai Tahu Whanui is at stake. Thus, one would assume that Te Runanga, representing the collective interest, would play a key role in deliberations on the Heads of Agreement. In turn, these deliberations would involve the consultation of the runanga whom they represent. All this should take place before the actual signing. The apparent neglect of these processes by the Negotiating Group also led to R. Tau's refusal to sign the document. He maintains that if one does things the correct way, then one avoids confusion because 'when you rush into things you end up with confusion, discontent and mistrust.'<sup>73</sup>

The Heads of Agreement provided that the Deed of Settlement contain an apology as discussed earlier. As O'Regan maintained, there will be a full recital of the relevant sins. The inclusion of this apology is accepted by the negotiation camp. However, when this apology is looked at in light of the Heads of Agreement the litigation camp has expressed concern over what it actually achieves. The negotiation camp have admitted that the settlement is not just. Furthermore, as related by C. Crofts, 'realistically the \$170 million doesn't come anywhere near the tribe's loss since 1840.'<sup>74</sup> Though the apology will be the closest thing Ngai Tahu will get to an act of redemption, some Ngai Tahu argue that it will be merely an apology in name and not necessarily by nature. Rather, the apology will just be empty words with the specific agenda of discharging the

---

<sup>72</sup>Draft Charter, 1993: 8

<sup>73</sup>R. Tau, Interview: 13-2-97

<sup>74</sup>Crofts, *The Press*: 14-12-96

Crown of its duties. The Prime Minister or even just a Crown Minister will go through the motions of the apology. The Queen will not feature as she did in the Waikato Deed of Settlement.<sup>75</sup> Therefore, a question asked by Te Maire Tau, Director of Ngai Tahu Research, is that if the settlement is not just and there is no real act of redemption by the Crown before Ngai Tahu, then what is the deal settling? Furthermore, can it be durable? He stated that, 'the problem with the Heads of Agreement is it's not based on justice...[or] on the Crown redeeming itself in front of us. Its just a deal....There's no rationale to this one, it's just a figure plucked out of nowhere, and that's the problem with it....We can't justify it to ourselves.'<sup>76</sup>

### **Economic Sovereignty vs Inalienable Rights:**

At the very core of the divisions arising from the Heads of Agreement, are the negotiation and litigation camps' differing approaches to rangatiratanga. In fact, the Heads of Agreement is the catalyst highlighting these different approaches. Both camps, in the final analysis, agree on what rangatiratanga is but not on how it is to be achieved. Both camps also have different starting points in reaching the fullest possible expression of rangatiratanga within New Zealand society.

To a certain extent the two camps' approaches to rangatiratanga are complementary. For the negotiation camp, O'Regan maintains that rangatiratanga is 'a concept limited now by circumstance but still potent....it means control of our assets.'<sup>77</sup> For the litigation camp, the primary elements of rangatiratanga, as expounded by R. Tau, are 'owning your own voice, maintaining your autonomy, maintaining your independence.'<sup>78</sup> The

---

<sup>75</sup>She might not have featured in that deed either if CHOGM did not happen to fall at the same time as the signing.

<sup>76</sup>T. M. Tau, Interview: 29-2-96

<sup>77</sup>O'Regan, 1994: 53

<sup>78</sup>R. Tau, Interview: 13-2-97

complementarity between these two perspectives is that if one controls one's own assets, as O'Regan maintains, then one can achieve autonomy and independence, as R. Tau states.

Both camps also have large and small-scale aspects within their approaches necessary in achieving rangatiratanga. For example, both camps to a degree accept that assets be collectively administered in the House of Tahu. The House of Tahu is a reality, as Ngai Tahu assets are currently managed using the House of Tahu concept.

Second, both camps have a future vision for the evolution of autonomous runanga. O'Regan has stated that 'the prospect of sub-dividing the tribal administration into autonomous regions is also being considered.'<sup>79</sup> Enlarging on this point, O'Regan maintained that 'my dream is that our marae and the life of the marae will be funded by our own assets, our own resources. Tino rangatiratanga at the end of the day means basically owning your own assets and paying for your own kai.'<sup>80</sup>

R. Tau, on considering the future development of Ngai Tahu believes that runanga will gradually evolve into autonomous regions: 'I have faith that our putea, or any form of settlement, will grow', he said, 'It will be big...and important to break down then, because we would have had years of experience at the local level to be able to imitate the overall structure as it is now.'<sup>81</sup>

However, the point of departure in approaches to rangatiratanga for both camps is where one should begin to attack the problem of achieving and maintaining rangatiratanga. I will first consider the negotiation camp's approach.

---

<sup>79</sup>O'Regan, 1989: 261

<sup>80</sup>Ibid, 1994: 53

<sup>81</sup>R. Tau, Interview: 13-2-97. Putea refers to tribal assets, usually financial ones.

The negotiation camp believe that by developing the economic sovereignty of the iwi through a centralised administration rangatiratanga can be greatly achieved. Economic sovereignty for the negotiation camp involves the right to generate and control one's wealth to the same level as other private citizens and companies within New Zealand society.<sup>82</sup> Furthermore, there should be no structural impediments preventing the development of economic sovereignty, such as were imposed on the Ngai Tahu Maori Trust Board, which, 'although elected by tribal members was legally accountable to the Minister of Maori Affairs, limited in the range of independent enterprise it could engage in, and ringed with restrictions imposed by paternalistic Governments.'<sup>83</sup>

For the negotiation camp, then, the opportunity for developing economic sovereignty of the Ngai Tahu iwi is offered by the Heads of Agreement. This involves a settlement package combining a quantum and investment opportunities via the settlement mechanisms. Through the economic sovereignty of the iwi, and hence collectivised structures for generating and accumulating wealth, rangatiratanga is fulfilled.

When considering the negotiation camp's approach to rangatiratanga, it would be wrong to over-generalise. It is true that rangatiratanga for them predominantly means the economic sovereignty of the iwi. However, rangatiratanga also means that, through the economic sovereignty of the iwi, Ngai Tahu beneficiaries can receive social benefits. This involves identifying and aiding areas of social life where many Ngai Tahu individuals lag behind much of Pakeha New Zealand. O'Regan's vision for social assistance involves setting up 'tribally subsidised superannuation and medical schemes, to build

---

<sup>82</sup>O'Regan, Lecture: 5-8-96

<sup>83</sup>O'Regan, 1989: 259



schools (Ngai Tahu Boys, Ngai Tahu Girls), to establish salvage education programmes, to train young people, to help Ngai Tahu into their own housing and employment.'<sup>84</sup>

Providing the opportunity for social assistance to Ngai Tahu beneficiaries implies that there is an individual, as well as collective, dimension within the negotiation camp's definition of rangatiratanga. Ngai Tahu Chief Executive Officer, Sid Ashton, in response to criticism that there is too much emphasis on money-making and not enough on people, maintained that 'we need putea in order to nurture the people.'<sup>85</sup> Hence, while generating and accumulating assets to achieve economic sovereignty is important, it is a means to an end and not an end in itself, the end being rangatiratanga of the iwi and those within it.

The negotiation camp support, not only individual advancement, but the eventual development of autonomous runanga. O'Regan's above-mentioned prospect of creating autonomous regional administration means that the centralised structure collectivising not only capital but beneficial rights may eventually be scaled down and/or dismantled. Beneficiaries will be able to manage the affairs of their own runanga.

According to the litigation camp, the major problem with the negotiation camp's approach to rangatiratanga is that beneficiary compensation is collectivised through a wide definition of who constitutes a Ngai Tahu beneficiary being applied. As explained in the section above, anyone who has Ngai Tahu whakapapa is considered a beneficiary. There is no distinction between Ngai

---

<sup>84</sup>Brett, 1992: 59. O'Regan has made it clear that this does not mean substituting state welfare with Ngai Tahu welfare schemes from the centralised structure. He rejects the notion of the iwi having to provide state welfare to Ngai Tahu beneficiaries. Thus, social benefits involve promoting individual advancement free from the bonds of state or any other form of welfare.

<sup>85</sup>Ashton, Korero: 23-11-96.

Tahu who hold ownership rights to land, passed down for generations, and Ngai Tahu who have no ownership rights. As highlighted by the Heads of Agreement, all Ngai Tahu beneficiaries, and all rights to compensation, are equalised because of this.

In distinguishing between approaches to rangatiratanga of the negotiation and litigation camps, R. Tau mentioned the basic philosophical difference between himself and O'Regan. This difference captures, in essence, why there are two different approaches at the outset. R. Tau stated that 'I'm dealing with people [R. Tau lives in Tuahiwi and is Upoko of Ngai Tuahuriri Runanga], Steven's dealing with the concept....Rangatiratanga belongs to the living people, and they don't see themselves fitting into an iwi because they can't touch it.'<sup>86</sup> Hence, R. Tau believes that rangatiratanga exists in the individual, the individual's whanau and representing collective whanau, the hapu. His point being that rangatiratanga resides at the local level only; 'at iwi level there is no such thing.'<sup>87</sup> Therefore, the negotiation camp's approach to rangatiratanga, the economic sovereignty of the iwi, is a concept having no direct relation to flax-root Ngai Tahu.

According to R. Tau, and others within the litigation camp, rangatiratanga originates with one's tipuna and continues for generations. It is indestructible and inalienable. However, rangatiratanga is capable of being repressed by external circumstances, as it resides in the individual. For example, if one's only means of survival is taken away, such as land for food gathering, regardless of the rangatiratanga one may possess, hunger will still result. Thus, although one's rangatiratanga remains intact even though this act has occurred, the

---

<sup>86</sup>R. Tau, Interview; 13-2-97

<sup>87</sup>Ibid.

potential for its expression via self-determination has been removed and, thus, repressed.

The litigation camp's interpretation of rangatiratanga is that, rangatiratanga, in its original state is mana. Mana is derived first from one's whakapapa, which imparts status, and second, from one's authority and prestige, which can be gained or lost over time. When a person is alive, they have mana, a dynamic state. When a person dies, it converts to rangatiratanga, which is static.<sup>88</sup> The rangatiratanga of the deceased is then passed on to their descendants. Rangatiratanga handed down from tipuna is regarded as a treasure and described as part of *nga taonga tuku iho* or treasures handed down.<sup>89</sup> This perspective of rangatiratanga is also illustrated by Cleave who states that an individual must live-up-to their inherited rangatiratanga, thus confirming its static nature. The efforts of proving one's rangatiratanga denotes the mana of the individual. This can fluctuate, a dynamic state, throughout one's lifetime.<sup>90</sup>

In that individuals have different ancestry, and tipuna themselves had differing amounts of mana, rangatiratanga is passed on to individuals and their whanau in varying amounts. One individual and their whanau may have a lot of rangatiratanga because of their prestigious tipuna of high status. Another individual and their whanau may have less rangatiratanga due to their tipuna not having a lot of status and prestige. However, while individuals are born with an unchanging amount of rangatiratanga, they can add or subtract mana in their own lifetime.

As Kawharu stated in Chapter 2, Maori in 1840 would have associated the Treaty's rangatiratanga, as it was a newly constructed term, with rangatira, or

---

<sup>88</sup>Ibid.

<sup>89</sup>Ibid.

<sup>90</sup>Cleave, 1983: 56

chief, which imparts evidence of breeding and greatness. The litigation camp's interpretation of rangatiratanga carries with it close associations to chiefly status or mana. Prior to 1840, then, the term *mana* would have been used to describe the qualities that rangatiratanga now possesses for the litigation camp.

Directly related to rangatiratanga are beneficial rights. Beneficial rights, as discussed in the previous section, involve ownership rights to certain areas of land. These rights, too, are handed down from tipuna. When an individual and their whanau has beneficial rights to land, then rangatiratanga, which has been passed down from their tipuna also, can be exerted in the interests of preserving this land. This exercise of ancestral rangatiratanga is then projected onto the individual's own mana for better or worse depending on the individual's perceived competence.

Another important aspect to rangatiratanga is that it can only be exerted within the region of individual's beneficial rights.<sup>91</sup> Only where an individual has ownership rights and connections of whakapapa can rangatiratanga be expressed. A place such as this would be within one's hapu area(s). For example:

**My rangatiratanga here [in Tuahiwi] comes from my ancestors because they're all in the cemetery here. I don't have rangatiratanga in places I don't have ancestors....I have very little [rangatiratanga] on the West Coast, where I don't have any ancestors. My rangatiratanga there declines. Now rangatiratanga and mana are virtually the same thing.<sup>92</sup>**

---

<sup>91</sup>R. Tau, Interview: 13-2-97

<sup>92</sup>T. M. Tau, Interview: 29-1-97

Therefore, for the litigation camp, rangatiratanga not only varies according to one's whakapapa but exists to protect inherited beneficial rights within certain areas.

Viewed from this angle, it is easy to see why the litigation camp rejects the Heads of Agreement. The beneficiaries whose tipuna's rights were breached last century by the Crown in the deed areas are not being directly addressed. Last century's grievances are not being removed but merely displaced by collective compensation. In this case, then, the grievances still exist. According to the litigation camp, fears are that central management of the iwi will be receiving Crown compensation. Thus, the iwi does not in itself possess rangatiratanga as they define, or the right to collective ownership over all deed area compensation. A direct remedy in R. Tau's estimation would involve Crown compensation, both financial and land where possible, allocated to each of the ten deed areas. The compensation's acceptability could then be voted on only by beneficiaries to the deed areas. Runanga themselves would manage beneficiary voting, having a roll of eligible voters.<sup>93</sup>

Relating this back to rangatiratanga, it is a matter of mana for whanau to seek redress for the Crown's disrespect and repression of tipuna rangatiratanga. As rangatiratanga is inherited, so too is the disrespect and repression it suffered. For the litigation camp, the Heads of Agreement does nothing to directly remedy this. Although the quantum offered by the Heads of Agreement is a concern, as it is far less than the actual losses incurred and cannot be disassociated from the fiscal envelope, that is of minor importance. Of major importance is the beneficiaries receiving direct remedy for grievances which have been in existence for approximately 150 years. Addressing the beneficial rights of today's generation serves to restore the losses suffered by the tipuna:

---

<sup>93</sup>R. Tau, Interview: 13-2-97

**The Claim belongs to our ancestors...it is their honour that we're talking about, their contracts that we're talking about, and therefore, we must give credibility and honour and remedy those contracts. Then the descendants are the beneficiaries to it....We must recognise the wairua of these things and the wairua goes back to the ancestors.<sup>94</sup>**

Therefore, direct remedy involves compensating today's generation, which in turn addresses the spiritual dimension of restoring the integrity of tipuna. This implies that, with beneficial rights receiving redress, the rangatiratanga of tipuna, now passed down to beneficiaries, is enhanced and expressed to a fuller potential.

In consideration of the litigation camp's approach to rangatiratanga, it would be an oversimplification to maintain that it is purely individualistic and of benefit only to beneficiaries as opposed to Ngai Tahu as an iwi. The notion of the common good of all Ngai Tahu is not lost in the litigation camp.

When compensation by the Crown to the ten deed areas has been accepted by the beneficiaries, then management of the compensation goes to the House of Tahu, the collective Ngai Tahu management concept.<sup>95</sup> Preliminary suggestions as to how beneficiary compensation and Ngai Tahu members' social assistance could be divided have been as percentage splits. For example, 30% of all finance available is allocated to members on application for specific assistance,

---

<sup>94</sup>Ibid.

<sup>95</sup>Many Ngai Tuahuriri beneficiaries reject the concept of the House of Tahu, as it is believed runanga should have full autonomy away from centralisation (R.Tau, Interview: 13-2-97). This is part of realising hapu rangatiratanga where runanga have the authority and ability to represent whanau beneficiaries interests. However, the House of Tahu may be supported if runanga can gradually evolve into an autonomous and independent role as foreseen by both the negotiation and litigation camps.

such as education grants, 40% is allocated to beneficiaries by right and the rest used for investment. No specific policy dealing with such issues has yet been worked on.<sup>96</sup>

A possible reason for such different approaches to rangatiratanga between the litigation and negotiation camps is highlighted by R. Tau. He points to an antagonism between the pa Maori and the pan-hapu Maori.<sup>97</sup> The pa Maori are those who live and/or still strongly identify with their ancestral land, the pa being the traditional hapu village such as Ngai Tuahuriri's Tuahiwi. Due to stronger cultural connections, the pa Maori adhere more to traditional practices of tikanga, or customary law, and live accordingly. Pa Maori, then, more likely align with the litigation camp's perspective as it claims to adhere more closely to tikanga, for example, the definition given to rangatiratanga. Pan-hapu Maori do not identify as strongly with their ancestral land, and thus their hapu, possibly due to a lack of ownership rights. Hence, pan-hapu Maori are more open to the concept of iwi, where beneficial rights belong in common to all Ngai Tahu. Pan-hapu Maori are more likely to be found in the negotiation camp.

---

<sup>96</sup>R. Tau, Interview: 13-2-97

<sup>97</sup>Ibid.

# **CHAPTER SEVEN**

## **Conclusion**



The research for this thesis has produced an examination of Ngai Tahu's contemporary approach to, and internal expression of, tino rangatiratanga. Ngai Tahu's approach primarily consists of the translation of tino rangatiratanga into the economic sovereignty of the iwi. However, Ngai Tahu does have an alternative approach to tino rangatiratanga, and it is that adhered to by the litigation camp. This approach translates tino rangatiratanga into individual, whanau and hapu autonomy. The internal expression of rangatiratanga is currently undergoing a transitional and evolutionary phase. Some runanga struggle to reaffirm their rangatiratanga in an environment where, Te Runanga have established themselves as the repository of the collective rangatiratanga for the entire tribe. Te Runanga's ability fulfil this role as the repository and, thus, be the tribal leader has been questioned by some beneficiaries.

The implications of this research arise primarily out of chapters five and six. Briefly, however, in recapping the rationale behind Chapters Two, Three and Four, these chapters were introductory and preparatory to the discussion of Ngai Tahu's approach to, and internal expression of, tino rangatiratanga. They provided the necessary background to the analysis. Chapter Two contextualised tino rangatiratanga, its meaning, its politicisation in the debate over indigenous rights and its future development within state mechanisms. Chapter Three discussed the nineteenth century Crown land purchases from Ngai Tahu, and how through fraudulent land deals Ngai Tahu's rangatiratanga was destroyed. Chapter Four traced the development of Ngai Tahu iwi's organisational structure from a Crown created Trust Board to the current tribally determined structure. This chapter illustrated how a degree of self-determination was recaptured creating the potential for the attainment of rangatiratanga, or economic sovereignty, within modern New Zealand society.

In concluding Chapter Five, rather than offering hard and fast solutions to problems identified, what is offered instead are some suggestions on ways the organisational structure could enhance intra-tribal communication. This, as suggested below, promotes not only the role of Te Runanga as the repository of the Ngai Tahu Whanui's collective tino rangatiratanga, but also the expression of runanga rangatiratanga. I consider the current problems identified in Chapter Five as symptoms of the transitional phase, not, as some may believe, the results of an insidious conspiracy where iwi management are 'building a castle for the selected few.'<sup>1</sup>

When considering the internal expression of rangatiratanga during this transitional period and between runanga and Te Runanga, a time of discovery prevails over who should have absolute authority over certain issues of importance such as the settlement. Should the rangatiratanga of runanga or the statutory authority of Te Runanga, who 'speak' on behalf of the collective tino rangatiratanga Ngai Tahu Whanui, hold sway? There is a blur between what is considered to be local affairs of runanga and tribal affairs of Te Runanga. Issues that cut across the boundaries of each body's sphere of influence by being both local and tribal, such as the Heads of Agreement and the eventual settlement, highlight this blur and cause friction. The key to eliminating this blur within the organisational structure is Te Runanga regularly consulting with runanga. In this way, the rangatiratanga of runanga is acknowledged by allowing for their direct input into decisions. Furthermore, Te Runanga, learning of runanga perspectives, can make decisions which accurately represent the wishes of Ngai Tahu Whanui. Through this, Te Runanga becomes the repository of the collective tino rangatiratanga of the Ngai Tahu Whanui, which includes runanga,

---

<sup>1</sup>R. Tau, Interview: 13-2-97. Here he was commenting on a belief being bandied about.

not only in the words of the Charter, but also in actuality. It would also function to silence much of the criticism over Te Runanga's leadership abilities.

The antagonism that exists between some runanga and Te Runanga indicates a process of renegotiation and evolution of tino rangatiratanga in Ngai Tahu. This is an inherent part of the transitional phase. Tino rangatiratanga is evolving from an autonomous expression only existing at the runanga/hapu level. The implication being that rangatiratanga is evolving according to the changing circumstances of the iwi, such as the implementation of a new organisational structure that is required to deal with pan-hapu issues. Rangatiratanga is expressed in a new collectivised manner at the Te Runanga/iwi level, where each of the eighteen runanga have a 1/18th representation, of equal status, in its expression. The enhancement and maintenance of communication is crucial to the sense of belonging each of the 18 runanga *believe* they have in Te Runanga's new collectivised version of tino rangatiratanga.

Conclusions arising out of Chapter Five also lead to the following suggestions of *how* to enhance communication. For the directors of Te Runanga themselves, it seems that the biggest obstacle in the way of consulting their runanga and developing an informed position in order to create policy is the lack of time. The most obvious way to create time is to employ directors on a full-time basis with the intendant responsibilities of consulting with runanga and creating policy.

As well as being full-time employees of Ngai Tahu, out-of-town directors could relocate to Christchurch, enabling easy access to resources and informal contact with other directors and Ngai Tahu's management structures. In this respect, a director's occupation would be parallel to that of a member of parliament.

However, full-time directors and their relocation to Christchurch may not be options for either the directors themselves or the Ngai Tahu organisational structure at present. Another option for utilising the available time efficiently for consultative purposes with runanga is to create further lines of communication within the organisational structure. This would involve both members of runanga and iwi management. An idea I discussed with Dr. Anne Parsonson of the University of Canterbury's History Department was the possibility for wananga, or schooling, to be held for elected or appointed members of runanga.<sup>2</sup> Wananga would involve a kaumatua and rangatahi from each runanga attending classes to learn about and discuss complex issues of importance to Te Runanga and the Ngai Tahu Whanui. Having both a kaumatua and rangatahi attending wananga allows different generations of beneficiaries to identify with these representatives and be more receptive to the information they have to give. Iwi management, via Runanga Development, could co-ordinate these sessions.

The representatives from each runanga could then disseminate the information to other beneficiaries at monthly runanga hui. This could be their primary function. In this way, not all the responsibility of consulting with runanga would fall on the Te Runanga directors. This would increase the time they could spend on understanding issues in an effort to create policy. However, their presence at runanga hui would still be required to receive the feedback from beneficiaries. A positive outcome of this would be that runanga could progress at the same rate as the rest of the organisational structure in future development plans.

Within the Draft Charter, as mentioned in Chapter Five, directors not only represent their runanga but are also required to act in the best interests of the Ngai Tahu Whanui. This points to a conflict of roles not only for the directors but

---

<sup>2</sup>Parsonson, Arowhenua Hui: 15-9-96.

for Te Runanga. Te Kawenata o Ngai Tahu, *Kaupapa Whakakotahi*, included at the beginning of the Draft Charter, and now the Charter itself, maintains that Te Runanga is the collective voice of the tino rangatiratanga of Ngai Tahu that resides in runanga. Within the Charter itself, however, under Section 3(a) Te Runanga is stated to be 'the repository of the collective tino rangatiratanga of the Ngai Tahu Whanui...[and]...(b) be the representative of the collective Ngai Tahu Whanui.'<sup>3</sup> There is an obvious conflict between the two requirements of Te Kawenata and the Charter. For example, what if the wishes of the majority of runanga, as reported by directors, conflicts with the wishes of the Ngai Tahu Whanui at large as the result of a postal ballot?

In this situation of conflict, which part of Ngai Tahu's constituency would prevail, the politically active core of Runanga represented on Te Runanga, or the wider Ngai Tahu Whanui? The democratic principle would rule that the majority's wishes - the Ngai Tahu Whanui - should prevail. If accepting both Te Kawenata and the Charter, one would need to regard runanga and the Ngai Tahu Whanui as a single body, though this inherent conflict can occur. Furthermore, if the Ngai Tahu Whanui is a single body, there are implications for runanga rangatiratanga. Te Runanga is representing not simply the interests of the eighteen runanga but also the interests of the wider Whanui. Thus, Ngai Tahu tino rangatiratanga does not reside within runanga alone, as Te Kawenata states, but collectively within the Ngai Tahu Whanui, as the Charter states. This provides no privileged status for rangatiratanga of any runanga.

Clarity on this point within the Charter needs to be provided. By indicating the role of runanga in the decision-making process, an amount of certainty will prevail. In this way, Te Runanga would not be claiming on one hand to be the

---

<sup>3</sup>Draft Charter, 1993: 8

collective voice of runanga rangatiratanga, and on the other profess to be the repository of the collective tino rangatiratanga of the Ngai Tahu Whanui.

Registration of members of the Ngai Tahu Whanui on voting rolls, which align each individual to their runanga/s, would diminish the gap between runanga and the Whanui's wishes. This would be the case as runanga would then also be encompassing members of the Whanui in their own decision-making processes.

Turning to the organisational structure, one adjustment could be to define a formal process of consultation. This would create stronger communication links between Te Runanga and runanga. In the second section of Chapter Five, R. Tau referred to the 'unclear processes at Te Runanga o Ngai Tahu level...that anything agreed to at the political level with the Crown should go back to Te Runanga o Ngai Tahu, who in turn must go back to their runanga and get a mandate.'<sup>4</sup> The key here, then, would be to clarify the processes to establish a formal procedure for consultation. In this way, runanga would be included in the formulation of top-level political decisions and would not feel excluded from the organisational structure. Although some runanga may not agree with the actions finally decided upon, at least they would have had an opportunity to make their views known.

A way of formalising the consultation process would be to include it in the Charter.<sup>5</sup> Theoretically, this consultation process would need to include the following elements. Group management would report to Te Runanga, who in turn would consult with runanga. Feedback from runanga to their directors would lead to the occurrence of debate. This debate would act as the catalyst for

---

<sup>4</sup>R. Tau, Interview: 13-2-97

<sup>5</sup>Having a Charter at all indicates an amount of maturity within Ngai Tahu. The parliament of New Zealand is still to reach this point having an unentrenched constitution and Treaty of Waitangi by which they are not bound. This is elaborated further in Appendix 5.

creating policy. Thus, Te Runanga would then be able to supply iwi management with directives.

Another way of developing clear lines of communication could be a code of ethics included in the Charter. This code of ethics, as much as giving a guide for a standard of performance within the structure, could provide working definitions of such words as *rangatiratanga*, the *Ngai Tahu Whanui* and *Ngai Tahu beneficiary*. The need for such definitions may seem unnecessary to many Ngai Tahu, but this research has demonstrated an inherent definitional conflict in these terms. *Rangatiratanga* is defined differently within the iwi such as the different definitions given by the negotiation and litigation camps as discussed in Chapter Six. The former party defines *rangatiratanga* strictly according to that used in Article Two of the Treaty, that is the guarantee of ownership over tribal assets, or, economic sovereignty. The latter party sees *rangatiratanga* as meaning, not only economic sovereignty, but also ancestrally endowed rights which impart varying amounts of status accordingly. *Ngai Tahu beneficiary* and *Ngai Tahu Whanui* are also defined differently by the two camps, as discussed in Chapter Six. The negotiation camp define any person with Ngai Tahu whakapapa as a beneficiary, and thus, they belong to the Ngai Tahu Whanui. However, according to the litigation camp, beneficiaries are those with ownership rights to land only, and these beneficiaries constitute the Ngai Tahu Whanui. This being the case, R. Tau points out a method to add certainty to definitions commonly used:

**The Charter has to be, perhaps, altered to recognise what was intended. What Te Runanga o Ngai Tahu needs is a code of ethics based on tikanga and based on whakapapa....So in terms of whakapapa, ahi kaa, turangawaewae, what these things mean has got to be in the code of ethics. We lack definition all the way**

through because we can talk past each other in terms of the words we use....You've got this word *rangatiratanga*, what does it mean?....So you *need* that code of values of what tikanga really is about so that it guides Te Runanga o Ngai Tahu, so they're not captured by the corporate world.<sup>6</sup>

A code of ethics could operate as the foundation for a formalised consultative process. For example, the definitional gist of rangatiratanga might be as follows: Rangatiratanga is handed down by the ancestors of beneficiaries and resides in Ngai Tahu beneficiaries. Their place to express their rangatiratanga is the runanga. Hence, in runanga 'resides the tino rangatiratanga of Ngai Tahu. Its collective voice is Te Runanga o Ngai Tahu.'<sup>7</sup> Thus, in order for Te Runanga to be guided by the principle of tino rangatiratanga, the consultative process must be carried out.

When defining procedures of consultation with runanga in the Charter, logically, the initial step would be to decide upon what sort of issues warrant consultation. Obviously not every issue that Te Runanga deals with has relevance to runanga affairs and rangatiratanga. Some Te Runanga issues are exclusively theirs, such as routine 'housekeeping' tasks. However, some issues, such as the settlement, cut across the boundaries between local and tribal affairs and are thus relevant to both runanga and Te Runanga spheres of influence. Hence, early consultation on this type of issue is required.

With a code of ethics and a consultative process formalised, the new leaders of Te Runanga would have greater support mechanisms for their decisions. It would also mean that a large amount of control would be held at the Te

---

<sup>6</sup>R. Tau, Interview: 13-2-97

<sup>7</sup>Te Kawenata O Ngai Tahu, Draft Charter: 1993



Runanga level. A number of positive outcomes could emerge from this. First, through having certain consultative procedures to follow, the internal process could, to a greater extent, take precedence over the external timetables of others.

Second, time would have to be made available for runanga inclusion in debate, would help directors with policy formulation. Te Runanga would become the forum for the expression of various view points on major issues throughout the Ngai Tahu Whanui. Directors then would always be able to bring to the table their runanga's perspective and, via the voting system currently in place, act on the majority of Ngai Tahu Whanui's wishes.

Third, a formalised consultative process and a code of ethics would foster the growth of a stable decision-making structure, as deemed necessary by O'Regan, for the protection of iwi assets.<sup>8</sup> Feedback to Te Runanga level would occur and rigorous policy creation would be the outcome. Directors would be given the tools from runanga by which to fashion policy created out of the debate which ensued. A relatively stable decision-making structure could operate, as runanga would be involved in it. Cohesion of Ngai Tahu iwi would thus be maintained.

Fourth, the development of a stable decision-making structure, would fill any leadership vacuum. Te Runanga would be able to supply iwi management with policy directives. Iwi management in turn would act in line with their theoretical roles as discussed above. They would be the managers of Te Runanga assets and liabilities and, at times, suppliers of advice via reports for inclusion in debate at Te Runanga and runanga levels.

---

<sup>8</sup>O'Regan, 1994: 46

Fostering an environment that develops a stable decision-making structure would also mean that any potential leaders, other than Te Runanga, would be excluded. This would dismiss any fears that another group is leading within the organisational structure.

Reflecting on Chapter Six, one difficulty I see with the litigation camp's approach involves their recognition of differing levels of rangatiratanga for individuals and whanau. One individual may have a prestigious whakapapa, and another may have very few. How should Ngai Tahu, and eventually runanga, allocate grants to beneficiaries with differing levels of rangatiratanga? Divisiveness amongst beneficiaries may eventuate if Ngai Tahu quantifies tipuna status and then awards individuals accordingly. One solution to this problem is to consult with all beneficiaries to let them determine a suitable outcome rather than leaving it to, what seems from the outside to be, ambiguous management processes.

In all cases of allocation to individuals, whether it be as envisaged by the negotiation or litigation camp, the allocation mechanisms should be transparent. A rationale as to why an individual receives X amount and another receives Y needs to be provided. This would prevent any misgivings individuals might have over the allocation procedures and claims of unfairness.

Furthermore, I see that the different approaches to tino rangatiratanga between the negotiation and litigation camps bring with them different emphases and interpretations of the concept as referred to in the Treaty. For the litigation camp, tino rangatiratanga is given a wide definition encompassing primarily the individual and their whanau, and then the focus is narrowed somewhat to encompass the modern adaptation of economic sovereignty for the tribe. Undisputably for the litigation camp, tino rangatiratanga is intimately tied to the individual, their whanau and hapu. Thus, tino rangatiratanga's link to the

individual is of utmost importance. From this perspective, addressing individuals' rangatiratanga within the hapu is paramount, and then this will function to ensure tribal cohesion. The secondary consideration is the economic sovereignty of the iwi.

As for the negotiation camp, their approach to tino rangatiratanga is completely iwi driven. In this way, the focus of tino rangatiratanga is initially narrow encompassing the achievement of economic sovereignty of the iwi. It is then widened a little by the provision of benefits that economic sovereignty of the iwi can impart to the individual. This narrow definition of tino rangatiratanga is unapologetically acknowledged as a reality by the negotiation camp. As O'Regan pointed out tino rangatiratanga is 'a concept now limited by circumstance but still potent.'<sup>9</sup> The limiting circumstance is not only modern New Zealand society but also the global society of the 1990s. Both Maori and Pakeha are now subject to the advantages and disadvantages of cosmopolitan life and the commonalities of existence and experience which this brings.

Economic sovereignty of the iwi and enhancing individual rangatiratanga are both apparent in each camp's approach. Hence, working together to accommodate elements of both approaches in tribal policies seems the most appropriate measure to take. I feel this is important to achieve, as an opportunity for consolidating cohesion between Ngai Tahu's administration and Ngai Tahu's flax roots has arisen.

Recent developments in November 1997 has seen 6341 of the Ngai Tahu Whanui voting 93.8% in favour of a proposed settlement<sup>10</sup>, the principles of which were outlined in Chapter 6's discussion of the Heads of Agreement. Just

---

<sup>9</sup>O'Regan. 1994: 53

<sup>10</sup>Mathias and Jackson, *The Press*: 1997.

over half of the Whanui eligible to vote in the ballot participated.<sup>11</sup> The momentum of support for the settlement not only by Te Runanga and iwi management, but the Ngai Tahu Whanui has widened the division, illustrated in Chapter 6, between the Negotiation camp's philosophy of tino rangatiratanga and that of the litigation camp. Ngai Tuahuriri Runanga headed by R. Tau, along with a Banks Peninsula runanga, voted against the proposed settlement offer at a Te Runanga hui in a 16:2 result favouring the settlement.

In other recent developments, R. Tau resigned as Principle Negotiator. Inferences drawn from this research conclude that conflicts between the proposed settlement's outcomes and R. Tau's convictions, expressed in the litigation camp's philosophies towards tino rangatiratanga, must have proven too great. On November 17th R. Tau sought an interim injunction in the High Court to prevent Te Runanga accepting the settlement on November 21st at the 1997 Hui-a-Tau at Kaikoura. O'Regan was confident, given the 'massive vote in favour', that the settlement would 'withstand any legal challenges.'<sup>12</sup> The challengers, members of the litigation camp, only constituted a minority of 6.2% of those who voted and, thus, it was always doubtful from these figures that an injunction would have succeeded. Almost on the eve of the signing of the historic Ngai Tahu settlement with the Crown, the legal action was withdrawn for reasons as yet unknown.

Tumultuous events coming to a head, just as Te Runanga are about to accept the Crown's offer of settlement, comes as no surprise when reflecting on the findings of this research. As my analysis has asserted, and what lay behind the legal actions of the litigation camp, are the divisions arising from fundamental differences in approach to tino rangatiratanga between the negotiation and

---

<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

litigation camps. These approaches are reconcilable to the point that each camp are willing to compromise on certain elements of their approach. Perhaps some sort of compromise was reached at the last minute with the threat of legal action pending. At this point, one can only speculate. However, the recommendations that have been discussed above, which aim at enhancing intra-tribal communication in the interests of consolidating tribal cohesion, are now made even more timely on the eve of a settlement and its future.

This research also has implications for the state and the future development of New Zealand society. The Court of Appeal asserted that the principle of partnership was at the heart of the Treaty.<sup>13</sup> If this is the case, Treaty guarantees of Maori rights qualifies the Crown's exercise of sovereignty in New Zealand. Hence, there must be a renegotiation of sovereignty where tino rangatiratanga becomes an integral component. As referred to in Chapter Two, this entails entering into a dialogue for constitutional reform and power-sharing.

As a starting point to the renegotiation of sovereignty, and as elaborated on in Appendix 5, what I recommend is the revisitation of Treaty entrenchment via an entrenched Bill of Rights. In doing so, not only are the guarantees made in the Treaty supreme law, but so are the rights of all New Zealanders. In this way, the principle of partnership between Maori and Pakeha, embodied in the Treaty, would not simply be paid lip service but exist in actuality.

In taking a step back from the issues raised by this research and reflecting on its implications for sociology, there are various avenues apparent for further research in this arena.

---

<sup>13</sup>Ibid, 1989: 249

This thesis sits in the mid-ground of this topic area. By this I mean that my research has delved into only one aspect of one iwi within New Zealand. From this point one is able to either draw the focus of this thesis out or draw it further in. Drawing the focus out could involve an investigation into other iwi, other Maori organisations or non-Maori organisations in a comparative study to discover their approaches to tino rangatiratanga and social development. For example, a comparative study between Ngai Tahu and an Urban Maori Authority would not only be a topical inquiry, but one that could uncover implications for the further development of Maori in New Zealand.

Drawing the focus in could involve further study into various runanga approaches to, not only tino rangatiratanga, but their individual desires for future social development. Research could investigate how they see themselves fitting into Ngai Tahu as an iwi. The future development of Ngai Tahu iwi within New Zealand society would be indicated.

In conclusion, the analysis of Maori and Pakeha relations for sociology is extremely important. Relations between these two ethnic groups are what this society's history is founded upon. The continued development of a mutually beneficial relationship, based on respect, is what New Zealand's cohesion as a society into the future will depend.

## REFERENCES

## References

Ashton, Sid, Korero, Hui-a-Tau, 23-11-96.

*Assignment*, "Power Grabs in Maoridom", Television New Zealand, 14-9-95.

Bolger, Rt. Hon. Jim, *Parliamentary Debates (Hansard)*, Weekly Hansard 60, 16 April to 18 April, 1996, pp11947-11948.

Brett, Cate, "Wanganui: Beyond The Comfort Zone", *North and South*, Auckland, May 1995, pp44-59.

Caldwell, Russell, *Whakapapa Ngai Tahu*, Sir Tipene O'Regan (ed.), Ngai Tahu Publications, Christchurch, 1993.

Cleave, Peter, "Tribal and State-Like Formations in New Zealand Maori Society 1750-1900", *Journal of Polynesian Society*, 92, pp51-92.

Cox, Lindsay, *Kotahitanga*, Oxford University Press, Auckland, 1993.

Crofts, Charles, "Kaiwhakahaere Report", *Ngai Tahu Maori Trust Board Annual Report*, 1996, pp26-27.

*Crown Proposals for The Settlement of Treaty of Waitangi Claims: Detailed Proposals*, Office of Treaty Settlements, Wellington, 1994.

Davies, Stephen and R. E. Ewin, "Sovereigns, Sovereignty and the Treaty of Waitangi", *Justice, Ethics and New Zealand Society*, Graham Oddie and Roy Perrett (eds), Oxford University Press, Oxford, 1992.

*Draft Charter of Te Runanga o Ngai Tahu*, Ngai Tahu Publications, Christchurch, 1993.

Durie, M. H., "Tino Rangatiratanga: Maori Self-Determination", Maori Congress: A Discussion Paper, 13-5-95, Department of History, University of Canterbury, 1996.

Evison, Harry, *Ngai Tahu Land Rights*, Third Edition, Ngai Tahu Maori Trust Board, Christchurch, 1987.

Evison, Harry, *Te Wai Pounamu*, Aoraki Press, Wellington, 1993.

Fleras, Augie and Roger Maaka, "Politicizing Customary Rights: Tino Rangatiratanga and the Recontouring of Aotearoa New Zealand", Paper presented at the Indigenous Rights, Political Theory, and Reshaping of Institutions Conference at ANU, Canberra, August 8-10, 1997.

Gardiner, Wira, *Return to Sender*, Reed Books, Auckland, 1996.

Goodall, Anake, Korero, Te Runanga o Ngai Tahu Hui, 18-5-96; Hui-a-Tau, 23-11-96.



Graham, Doug, "Addressing Unfulfilled Obligations", 18-10-95; "Chiefs 'did cede sovereignty'", 19-10-95; "Calls for realism on Maori issues", 20-10-95; *The Press*, Christchurch.

Hardin, G., and J. Baden, *Managing the Commons*, W. H. Freeman and Co., San Francisco, 1977.

Harris, B.V., "The Constitutional Base", *New Zealand Politics in Perspective*, Hyam Gold (ed.), Second Edition, Longman Paul, Auckland, 1989.

"Heads of Agreement", Parties: Her Majesty The Queen in the right of New Zealand and Te Runanga o Ngai Tahu, 5 October 1996.

*Honouring The Treaty*, Helen Yensen, Kelvin Hague, Jane Kelsey, Mitzi Nairn, Tim McCreanor and David Williams (eds), Penguin Books, Auckland, 1989.

Huria, Gabrielle, "The Bill: Ngai Tahu putting a stamp on our identity and tribal rights", *Te Karaka*, Raumati/Summer, 1996.

Ignatieff, Michael, *Blood and Belonging*, Vintage, London, 1994.

Iosefa, Sarona, "Tribe wins \$10m payment", *The Press*, Christchurch, 18-6-96.

Keene, Howard, "Ngai Tahu raps militant tactics", *The Press*, Christchurch, 20-4-95.

Keene, Howard, "Ngai Tahu, Crown in \$170m deal", *The Press*, Christchurch, 5-10-96.

Kelly, Stephanie, "The Ngai Tahu Maori Trust Board", University of Canterbury, MA Thesis, 1991.

Kelsey, Jane, "From Flagpoles to Pine Trees", *Nga Patai*, Paul Spoonley, David Pearson and Cluny MacPherson (eds.), Dunmore Press, Palmerston North, 1996.

Kidd, Hon. Doug, *Parliamentary Debates (Hansard)*, Weekly Hansard 60, 16 April to 17 April, 1996, pp11944-11945.

Lee, Sandra, Submission to the Maori Affairs Select Committee, 1992.

MacFie, Rebecca, "Where To Now For Ngai Tahu", *North and South*, Auckland, July 1997, pp98-105.

Mantell, Koa, Korero, Arowhenua Marae, 15-9-96.

Mathias, Peter, and Greg Jackson, "O'Regan Confident on Challenge", *The Press*, Christchurch, 1997.

McHugh, Paul G., *The Maori Magna Carta*, Oxford University Press, Auckland, 1991.

Mead, Richard, Korero, Hui-a-Tau, 23-11-96.

Melbourne, Hineani, *Maori Sovereignty: The Maori Perspective*, Hodder Moa Beckett, Auckland, 1995.

Ngai Tuahuriri Runanga Hui, 7-9-96; 16-7-96

Ngai Tahu Negotiation Group Presentation Material, "The Heads of Agreement, 23-24 November 1996". Ngai Tahu Publications, Christchurch, 1996.

Ngai Tahu Negotiations: Preliminary Crown position on sites of recreational and conservation interest, Public Meeting, Christchurch 18-9-96.

Ngai Tahu Sea Fisheries Report, Waitangi Tribunal, Wai-27, Wellington, 1992.

Oliver, Bill, "Necessity or Choice", *New Zealand Books*, Peppercorn Press, Wellington, Vol. 5, No. 17, 1995, pp18-20.

Orange, Claudia, *The Treaty of Waitangi*, Allen and Unwin, Wellington, 1987.

O'Regan, Sir Tipene, and Charles Crofts, "Joint Chairs Review", *Te Runanga o Ngai Tahu Annual Report 1996*, pp6-13.

O'Regan, Tipene, "Memorandum on the Restoration of the Legal Personality of Ngai Tahu", Ngai Tahu Submissions to the Waitangi Tribunal, 1993.

O'Regan, Sir Tipene, Korero, Lecture, Department of History, University of Canterbury, 27-5-96; 5-8-96.

O'Regan, Sir Tipene, Korero, Te Runanga o Ngai Tahu Hui, 21-5-96; 21-9-96.

O'Regan, Tipene, "The Ngai Tahu Claim", *Waitangi*, I. H. Kawharu (ed.), Oxford University Press, Auckland, 1989.

O'Regan, Tipene, "Readying the canoe on the beach", *Vision Aotearoa*, Witi Ihimaera (ed.), Bridget Williams Books, Wellington, 1994.

O'Regan, Sir Tipene, Korero, Hui-a-Tau, 23-11-96.

O'Regan, Sir Tipene, Korero, Arowhenua Marae, 15-9-96.

O'Regan, Sir Tipene, "A Stepping Stone Into The Future", *Te Karaka Special Edition - Crown Settlement Offer*, Ngai Tahu Publications, Christchurch, 1997.

Palmer, Geoffrey, *Unbridled Power*, Second Edition, Oxford University Press, Oxford, 1990.

Parsonson, Anne, "Challenge to Mana Maori", *The Oxford History of New Zealand*, Geoffrey W. Rice (ed.), Oxford University press, Auckland.

Renwick, William, "Decolonising Ourselves From Within", *The British Review Of New Zealand Studies*, No.6, Nov. 1993, pp29-59.

Resolution Fax, Te Runanga o Ngai Tahu, 11-11-96.

"Rules of Te Runanga o Ngai Tahu Inc.", from S.M. Kelly's MA Thesis, 1991.

Sewell, Henry, Extract from NZPD discussing the Native Land Act, Vol. 24, Aug. 29, 1870: 254. Department of History, University of Canterbury, 1996.

Sewell, Tony, Korero, Ngai Tuahuriri Hui, 16-9-96.

Sharp, Andrew, *Justice and the Maori*, Oxford University Press, Oxford, 1990.

Tau, Rakiihia, Korero, Ngai Tuahuriri Runanga Hui, 1-10-96; 18-11-96.

Tau, Rakiihia, Korero, Interview: 13-2-97.

Tau, Te Maire, Korero, Interview: 29-1-97.

Tau, Te Maire, "Time Line: Our Past to Present", *Te Karaka*, Raumati/Summer, Ngai Tahu Publications, Christchurch, 1996.

Tau, Te Maire, "Kurakura Ngai Tahu", University of Canterbury, MA Thesis, 1992.

Te Aika, Mahara, Korero, Interview: 7-1-97.

*Te Karaka Special Edition - Crown Settlement Offer*, Ngai Tahu Publications, Christchurch, 1997.

"Te Kawenata o Ngai Tahu", Te Runanga o Ngai Tahu Draft Charter, Ngai Tahu Publications, Christchurch, 1993.

*Te Runanga O Ngai Tahu Annual Report 1997*, Ngai Tahu Publications, Christchurch, 1997.

Temm, Paul, "Closing Address by Counsel for the Ngai Tahu Claimants", Wai-27, Rangiora, Tuahiwi Marae, 14 August, 1989.

*Te Runanga o Ngai Tahu Annual Report, 1996*, Ngai Tahu Publications, Christchurch, 1996.

Te Runanga o Ngai Tahu, "Key Issues from the Heads of Agreement: Summary", November 1996.

*The Press*, "Land for Ngai Tahu tipped to total 630ha"; "Ngai Tahu To Review Treaty Settlement", 14-12-96; "Land for Ngai Tahu tipped to total 630ha", 19-9-96; "Editorial", 9-10-96.

Tirikatene-Sullivan, Hon. Whetu, *Parliamentary Debates (Hansard)*, Weekly Hansard 60, 16 April to 18 April, 1996, pp11948-11950.

Walker, Ranganui, *Nga Pepa a Ranganui*, Penguin Books, Auckland, 1996.

Walker, Ranganui, *Struggle Without End/Ka Whawhai Tonu Matou*, Penguin, Auckland, 1990.

Wetere, Hon. Koro, *Parliamentary Debates (Hansard)*, Weekly Hansard 60, 16 April to 18 April, 1996, pp11945-11947.

Williams, H.W., *The Dictionary of the Maori Language*, Seventh Edition, Government Printer, Wellington, 1975.

## **APPENDICES**

## Appendix 1

### The text of the Treaty of Waitangi in English

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands — Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

#### ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

#### ARTICLE THE SECOND

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

#### ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

(Signed) W. HOBSON  
Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

### The text of the Treaty of Waitangi in Maori

KO WIKITORIA, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roia Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua nianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

#### KO TE TUATAHI

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

#### KO TE TUARUA

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

#### KO TE TUATORU

Hei wakaritenga mao hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON  
Consul and Lieutenant-Governor

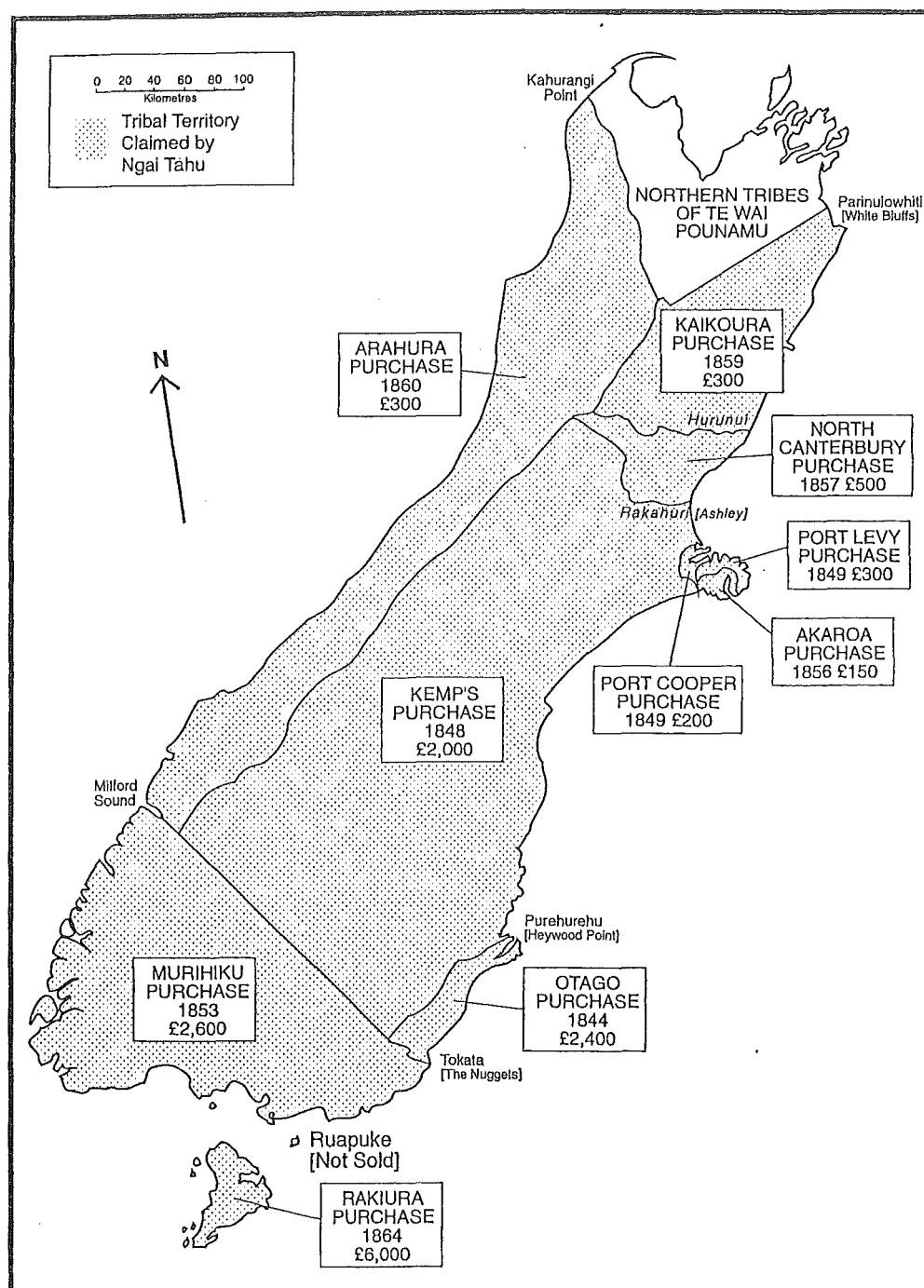
Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.

*Source: Honouring the Treaty, 1989: pp27-31*

## Appendix 2

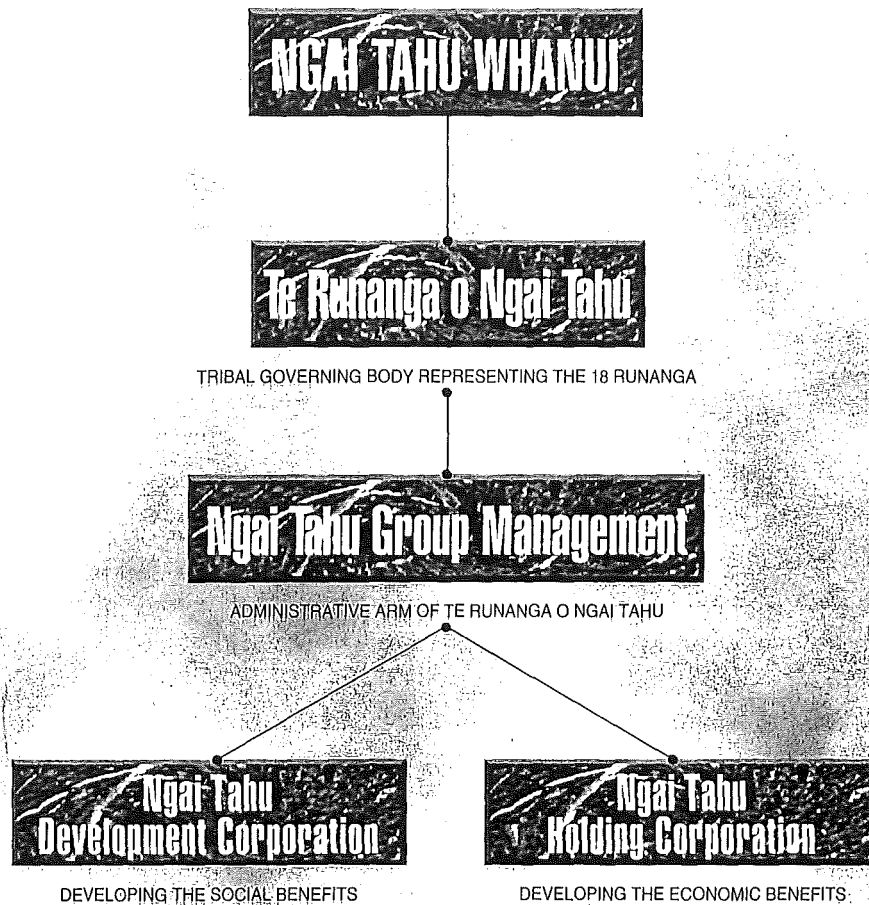


*The Ten Official Purchases of Ngai Tahu Territory, 1844 - 1864*

**Source: Evison, 1993: 404.**



## Appendix 3



**Source: Te Runanga o Ngai Tahu Annual Report, 1996: 23**

## TE KAWENATA O NGAI TAHU

The **Kaupapa Whakatuwhera** of this Charter is that the House of Tahu is set up amongst us to nurture our people, to shelter our people and to serve our people. It is both the symbol of our identity as Ngai Tahu Whanui and the Whare Whataraki of that which we together own.

The **Kaupapa Poutokomanawa** of this Charter is the protection and growth of the Ngai Tahu putea.

The **Kaupapa Tahuhu** of this Charter is the accountability of those charged with responsibility for the putea to our Papatipu Runanga, to our people and to future generations.

The **Kaupapa Poutahu** is the principle that the assets of Ngai Tahu will be managed separately from the bodies that spend and distribute the income earned from those assets.

The **Kaupapa Whakahuataka** of this Charter is that all those entitled by whakapapa to the benefits of the House of Tahu shall be protected in their right to benefit.

The **Kaupapa Whakakotahi** is that the poupou of the House of Tahu are the Papatipu Runanga of our people each with their own mana and woven together with the tukutuku of our whakapapa. In them resides the tino rangatiratanga of Ngai Tahu. Its collective voice is Te Runanga o Ngai Tahu.

## Appendix 5

### **Sovereignty in New Zealand, the Treaty of Waitangi and the Ngai Tahu Settlement:**

#### **Indivisible Sovereignty:**

The following argument will highlight the fact that the Crown's notion of indivisible sovereignty, based on the seventeenth century Hobbesian theory, is outdated and inappropriate for New Zealand especially when considering the implications of the Treaty of Waitangi. As this is the case, there is a clear need for legal sovereignty to be limited and divided within the Crown through the entrenchment of the Treaty. Not only would this curtail unbridled parliamentary supremacy, but comprehensively fulfil Crown Treaty obligations.

In setting the context for this argument I will give a brief explanation of the Hobbesian notion of sovereignty.

For political theorist Thomas Hobbes, sovereignty, of an enduring kind, was only possible through it being indivisible. Hobbes' justification for indivisible sovereignty was that the state is made up of a collection of citizens<sup>1</sup> with 'disparate natural wills.'<sup>2</sup> In effect these wills would manifest into a myriad of concepts of what is just and unjust in certain situations. Hence, there is a necessity to reduce these wills into a single artificial will. In the absence of such a reduction, infinite conflicts and chaos in society would reign as citizens would be following their own wills and, thus, their own brand of justice in regard to one another.<sup>3</sup>

Therefore, in an effort to avoid such a situation, a single artificial will would be imposed by a single sovereign or, at most, a sovereign unit characterised by an assembly of citizens. Hobbes preferred a single sovereign as opposed to an assembly of citizens, as it removed the possibility of disagreements and division. As did Hobbes, I will work with the single sovereign argument.

---

<sup>1</sup>The citizen of Hobbes' time refers to a largely 'ethnically homogenous...enfranchised political class of white propertied males - workers, women, black slaves, aboriginal peoples - found themselves excluded from citizenship and thus the nation' (Ignatieff, 1994: 4).

<sup>2</sup>Davies and Ewin, 1992: 42

<sup>3</sup>Hobbes makes the assumption that negotiation, compromise and agreement is beyond the human condition.

The sovereign has an artificial will expressed through an artificial decision making procedure known as the law. Furthermore, the sovereign's law is paramount and binding. All rulings are 'ultimate, unlimited and absolute.'<sup>4</sup> In all cases of disagreement the sovereign's law provides a single resolution. For Hobbes, then, the sovereign is the 'maker, declarer and interpreter of the law' which in essence is his own artificial will.<sup>5</sup> The sovereign is omnipotent, a *Leviathan*.<sup>6</sup> In theory, no other will supersedes the sovereign's will (bar God's, one would imagine), and, in short, the sovereign's will is absolute and indivisible. Hobbes' sovereign, then, formed the concentration of legislative, executive and judicial in his/her person.

I use the words 'in theory' when describing the sovereign's will above, as underlying Hobbes' absolutist doctrine is the qualification that, in practice, the sovereign must rule in the interests of the citizenry. Ruling in their interests means aiming at preserving social harmony.<sup>7</sup> The sovereign's absolute authority depends on this, as citizens' obedience is given on the condition that conflict and war is to be avoided and peace promoted.<sup>8</sup> Needless to say, if the sovereign does not preserve social harmony and instigates war, be it civil or with another state, citizens' submission to his/her authority is forfeited.

In New Zealand today we see the Hobbesian legacy of indivisible sovereignty existing. This was passed on via the 'constitutional genes' inherited from the British colonisers of New Zealand. To understand how these 'genes' were inherited, a brief history of the origins of New Zealand's constitutional rules will follow.

The main source of New Zealand's constitutional rules is the United Kingdom. On May 21st, 1840, British sovereignty was proclaimed over New Zealand by virtue of the Treaty of Waitangi. Through this assertion of British sovereignty in New Zealand, 'all statutes in force in the United Kingdom...so far as they were

---

<sup>4</sup>Davies and Ewin, 1992: 42

<sup>5</sup>Ibid: 43. Hobbes assumed a masculine sovereign in his writing.

<sup>6</sup>The Leviathan is a great sea monster from the Book of Job by which Hobbes identified sovereign power as analogous. The bible excerpt, as reproduced by Sharp, referring to Leviathan's omnipotency maintains that: '*There is nothing on earth to be compared with him. He is made so as not to be afraid. He seeth every high thing below him; and he is king of all the children of pride...*' (Sharp, 1990: 282)

<sup>7</sup>However, the ingredients necessary for preserving social harmony, one can imagine, may be as disparate as individuals' wills.

<sup>8</sup>Davies and Ewin point out that Hobbes recognised that even a Hobbesian sovereign, while aiming to preserve social harmony, could not guarantee a permanent end to war (1992: 51).

applicable to the circumstances in New Zealand, became part of New Zealand's statute law.<sup>9</sup> New Zealand inherited a set of 'ready-made' laws.<sup>10</sup>

From 1840 to 1986 the United Kingdom Parliament retained the capacity to enact laws on New Zealand's behalf. The New Zealand General Assembly had only limited law-making powers until 1947. The General Assembly itself was brought into being by the New Zealand Constitution Act (1852) enacted by the United Kingdom Parliament.<sup>11</sup> In 1947 with New Zealand's adoption of the Statute of Westminster (1931) and the United Kingdom's enactment of the New Zealand Constitution (Amendment) Act (1947), New Zealand's law-making powers became unlimited. However, the option for the United Kingdom Parliament to enact laws on New Zealand's behalf, if requested and consented to by the New Zealand Parliament, remained until the Constitution Act (1986).

In 1986 the Constitution Act was passed by New Zealand's Parliament which reaffirmed in Section 15 (1) that 'the Parliament of New Zealand continues to have full power to make laws.'<sup>12</sup> Only in 1986 via this Act was the New Zealand Parliament the completely independent authority for making laws for New Zealand.

Along with the inheritance of British constitutional forms in New Zealand was the Hobbesian notion of indivisible sovereignty. Notwithstanding that, the United Kingdom itself was undergoing historical transitions of power from monarchy to parliament by 1840. In Britain prior to the eighteenth century the monarch, the person who actually wore the Crown, was the focal point of all executive, legislative and judicial powers. Thus, fully embracing the Hobbesian ideal of an omnipotent sovereign. However, during the eighteenth and nineteenth centuries, Britain underwent a transitional period where actual institutions of government, such as parliament, gradually took over the monarch's functions though 'the fiction that they were the monarch's was maintained.'<sup>13</sup> This fiction was passed on to New Zealand. Today, still the government is administered in Her Majesty's name with the Governor-General acting on her behalf (albeit, on the advice of Ministers).<sup>14</sup> In New Zealand, sovereignty itself is said to locate in 'the Crown'

---

<sup>9</sup>Harris, 1989: 34

<sup>10</sup>Ibid

<sup>11</sup>Sections of this Act remained in force until 1986 when it was repealed.

<sup>12</sup>Harris, 1989: 39

<sup>13</sup>Oliver, 1995: 7

<sup>14</sup>Palmer, 1987: 96

and is often used, as Oliver points out, 'as a piece of mystification and a bludgeon lawyers and politicians use to silence criticism.'<sup>15</sup>

New Zealand has three major institutions of government which combine to make up the Crown. These institutions are: the legislature or parliament where the House of Representatives reside; the executive or cabinet where ministers are selected from the majority party in parliament to make the key decisions of government; and the judiciary or court system which resolves disputes between individuals and the Crown and between individuals themselves.<sup>16</sup> The dominant feature of the Crown is parliamentary supremacy, where all other institutions, such as the public services, and those within the Crown and parliament itself 'either derive their authority from parliament, or exercise their powers with the implied consent of parliament.'<sup>17</sup> Parliamentary supremacy is the '*Grundnorm* or fundamental rule of our legal system.'<sup>18</sup> This constitutional rule, like many others, is a British import. Hence parliament, being the supreme Crown institution, is the indivisible legal sovereign according to the Hobbesian ideal.<sup>19</sup> This was reaffirmed by the Minister for Treaty of Waitangi Negotiations, Doug Graham, who, when referring to parliament, maintained that 'we have one country and one indivisible legal sovereign.'<sup>20</sup>

One important doctrine informing the conduct of the three major Crown institutions, mentioned above, is the doctrine of the separation of powers. The theory behind this doctrine is that the three different arms of the Crown should work relatively autonomously, and thus act as a check on each others exercise of power.<sup>21</sup> This separation entails that the *making* and the *enforcing* of laws are presided over by different arms of the Crown. This ensures that one arm is not subject to the dictates of another arm where, for example, governmental self-interest in a particular outcome interferes with a just result. Where powers are separated successfully, one arm 'acts as a check on the excesses of the

---

<sup>15</sup>1995: 7

<sup>16</sup>Harris, 1989: 47

<sup>17</sup>Ibid: 38

<sup>18</sup>McHugh, 1991: 58

<sup>19</sup>Though it is of the more undesirable kind for Hobbes, being an assembly of citizens, which leaves room for division, rather than a single sovereign 'speaking in a single voice'.

<sup>20</sup>Graham, *The Press*: 19-10-95

<sup>21</sup>Harris, 1989: 47. In mentioning that the Crown should work *relatively autonomously* I do not mean *absolutely* autonomously as 'some co-ordination of various policies and administration in Government as a whole is necessary' (Palmer, 1987: 7). On one hand a complete separation would result in extreme inconsistencies and governmental paralysis. On the other hand, a complete fusion would 'produce a tyrannical government' as the makers and enforcers of law would become one (Ibid) .

others.'<sup>22</sup> Furthermore, when power is separated and spread amongst the different arms of the Crown 'the chance to be free from concentrations of arbitrarily exercised power is increased.'<sup>23</sup>

Though the theory of the doctrine of the separation of powers is adhered to in New Zealand, especially in relation to the impartiality of the court system, in practice the Crown has an inbuilt mechanism for amalgamating two arms in particular. These two arms are the legislative and executive branches. This amalgamation goes against the theory of the separation of powers and reinforces unbounded parliamentary supremacy. In this way the Hobbesian ideal of an omnipotent sovereign is fulfilled.

The fusion between the executive and legislative arms leads to excessive parliamentary supremacy. There is no clear separation between these two arms. The reason for this is that the government or ruling party of the day 'effectively controls both the legislative and executive branches.'<sup>24</sup> The government not only has a majority in parliament but also ruling party members of parliament are cabinet ministers. Harris highlights the lack of separation in New Zealand, where 'the mixing of personnel and functions between the different institutions of government is such that the doctrine of the separation of powers and the theory of checks and balances have little application in New Zealand.'<sup>25</sup> In short, then, members of the executive and the legislature are one and the same.

The doctrine of parliamentary supremacy in New Zealand entails that parliament can make and unmake laws as suits the government of the day. P.B. Temm Q.C. in his closing address before the Waitangi Tribunal gave the classic example illustrating parliament's legislative supremacy and power in New Zealand. He cited the John Donald McFarlane Estate Administration Act (1918), which pronounced the named man to be dead even though all concerned knew that he was alive. However, parliament declared the man legally dead and that is all that mattered. For any legislation to be passed all that is required is for the House of Representatives to have a majority of one in support of the bill.<sup>26</sup>

Furthermore, parliament confers no status of importance to any statute regardless of its content. For example, even the Constitution Act (1986), which

---

<sup>22</sup>Palmer, 1987: 6

<sup>23</sup>Ibid

<sup>24</sup>Ibid

<sup>25</sup>1987: 47

<sup>26</sup>Harris, 1989: 39

gives the basis for all forms and structures of government in New Zealand and the Human Rights Commission Act (1977) 'have no greater status than the Margarine Act 1908.'<sup>27</sup> Therefore, it is asserted that parliament has a 'very broad law-making authorisation when one bears in mind...that there is no written Constitution or Bill of Rights against which legislation may be measured by the courts.'<sup>28</sup> However, in 1982 it was stated by the Court of Appeal that the Court has reservations about whether 'parliament can take away the rights of citizens to resort to the ordinary courts of law for the determination of their rights.'<sup>29</sup> This was a strong statement by the courts when one bears in mind that the only indivisible legal sovereign resides in parliament. Though this was stated, and it may be somewhat comforting to know that the Court of Appeal informally reserves such powers, it has yet to be put to the test against parliamentary supremacy.

Not wishing to dwell overlong on the lack of separation of powers between the executive and legislative arms of the Crown, the arm in which a separation of power is crucial is the court system. According to Harris, the independence of the judiciary 'is one of the cornerstones of our constitution.'<sup>30</sup> This is because public perception of justice from the rule of law can only be attained from the maintenance of judicial impartiality.<sup>31</sup> Thus, in order for there to be a separation between the law makers and the law enforcers, the judiciary do not take part in legislative or executive functions. Judicial independence and separation of powers is maintained in a number of ways:

**the convention of non-political appointments to the bench;  
immunities from judicial proceedings; protections from  
dismissal except by parliament, and, most importantly, the  
consistently impartial way in which judges themselves perform  
their functions.**<sup>32</sup>

In reference, then, to the doctrine of the separation of powers, the judiciary is the arm that most closely adheres to the theory as it is required to ensure the impartiality of the law. However, it is argued that the common law or judge-made law that evolves independently from parliament and developed through the

---

<sup>27</sup> *Ibid*

<sup>28</sup> *Ibid*

<sup>29</sup> Temm, 1989: 17 quoting the Court of Appeal

<sup>30</sup> 1989: 47

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*: 47



application of the doctrine of precedent and judicial interpretation of statutes is actually law-making.<sup>33</sup> This is said to be more in the arena of the legislature than the judiciary. One could also argue, though, that without the courts possessing such powers, inconsistency and rigidity that 'flies-in-the-face' of commonsense would prevail.

Therefore, looking at the whole structure of the Crown, at present, one can say that the courts are meant to redress the imbalance created by the combined legislative and executive arms. However, given that there is no existing higher authority, such as a Bill of Rights against which the courts can measure legislation, parliamentary power continues to be unbounded. This is the present situation, regardless of what the Court of Appeal has murmured in the past about preserving the rights of citizens.

Into this scenario we can now consider the Treaty of Waitangi and its status within the existing law.

P.B. Temm Q.C., in his Closing Address before the Waitangi Tribunal (1989), in discussing the principles of the Treaty, stated that the most complex and difficult principle of all is the principle of the Crown's right to govern New Zealand.<sup>34</sup> This principle is gleaned from Article One of the Treaty, where Maori ceded sovereignty (English version)/kawanatanga (Maori version) to the Crown. While this principle seems straightforward enough, on further analysis it is quite the converse. The Article One pronouncement in the Treaty at first appears to be affirming the doctrine of parliamentary supremacy. In this regard, it is what lawyers and politicians often refer to for justification of the unrestrained legislative supremacy of parliament.<sup>35</sup>

However, immediately proceeding the Article One pronouncement granting sovereignty/kawanatanga to the Crown, Article Two follows which guarantees *te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa* (Maori version) / *the full and exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties* (English version) to

---

<sup>33</sup>*Ibid*: 48. The doctrine of precedent is where the courts are obliged to apply the same principles to a case whose material facts are indistinguishable from previous cases (Williams, 1982: 67).

<sup>34</sup>Temm, 1989: 15

<sup>35</sup>*Ibid*: 17. Also see Doug Graham's article 'Chiefs 'did cede sovereignty' from *The Press* 19-10-95.

the Maori.<sup>36</sup> The Crown right to sovereignty has the countervailing obligation of protecting Maori tino rangatiratanga over their assets.

The provisions of Article Two create many other principles of the Treaty. Notably, the principle of the Crown's duty to act in good faith. The rationale for this principle, aside from the Treaty's actual provisions, initially stem from Lord Normanby's instructions to Captain Hobson and maintained that: 'all dealings with the aborigines...be conducted on the same principles of sincerity, justice and good faith.'<sup>37</sup> By this reasoning then, the right to govern is given 'providing the act of governing is conducted in the utmost good faith' toward Maori.<sup>38</sup>

Furthermore, there is the principle of the Crown's duty of active protection as referred to above. The origin of this principle is that under Article One the Crown, through being sovereign, has 'the power to protect the resources of the nation. But under Article Two it has 'the duty to protect the rights the Maori New Zealanders have in those resources.'<sup>39</sup> Once again, by this reasoning, 'the right to govern is given provided there is compliance with the duty of protection.'<sup>40</sup>

Thus, in a more holistic view of the Treaty, Article Two guaranteeing tino rangatiratanga to Maori qualifies Article One where the Crown is granted sovereignty over New Zealand. What is more, an indivisible legal sovereign who holds absolute power, and hence conforms to Hobbes' notion of sovereignty, is inappropriate. This is so in light of the contractual obligations the British Crown made with the Maori via the Treaty.

This balanced view of the Treaty may be all well and good, but the problem which deepens the complexity of this principle of the Crown's right to govern is that the Treaty alone, in the purest sense, is afforded no legal force by the Crown. As stated by Harris: 'the strict legal position is that the Treaty of Waitangi by itself is not part of New Zealand law and therefore is not enforceable by the courts.'<sup>41</sup> The only way the Treaty can be legally recognised

---

<sup>36</sup>Walker, 1989: 316. It is interesting to note how Article One of the English version granting sovereignty to the Crown managed to find its way into law legally justifying the Crown's right to govern and institute laws, etc., but Article Two's guarantee of tino rangatiratanga never received the same attention. What is more, strictly speaking, the Treaty as a whole does not even receive the force of law.

<sup>37</sup>Temm, 1989: 17

<sup>38</sup>Ibid: 18

<sup>39</sup>Ibid: 10

<sup>40</sup>Ibid

<sup>41</sup>1989: 49

is through its terms or principles being enacted by a statute. Examples of such statutes are the Resource Management Act (1991), the Treaty of Waitangi (State Enterprises) Act (1987) and the Treaty of Waitangi Act (1975) (which, incidentally, set up the Waitangi Tribunal). These statutes, can be repealed or adjusted by parliament with a majority of only one. Furthermore, by the Treaty having no legal status, parliament can choose to ignore (and has done so frequently in the past) the rights and obligations, or the principles of the Treaty, in legislation.<sup>42</sup>

Therefore, the question may be asked why has the founding document of New Zealand never become supreme law? In a lengthy quote, but worthy of reproduction here, Temm Q.C. works through the logic of how parliament has the right to make laws, and in doing so, attempts to answer this question:

**Maori New Zealanders start the process of explanation by asking, how does the New Zealand Parliament have the right to govern and make laws? The answer to that question is the New Zealand Constitution Act 1986. Next they ask, how did our parliament get the right to pass the Act? The answer to this question is of course a combination of the Statute of Westminster Act 1947 and the New Zealand Constitution Act 1852. The next question is - who passed those Acts? That leads to the answer that both statutes were enacted by the Parliament of the United Kingdom. The fourth question is obvious - how did the British get the right to make laws over us? The response has to be - the Royal Proclamation of Sovereignty pronounced on the 2nd of October 1840. That inevitably leads to the fifth question - how did Queen Victoria get the right to make a Proclamation affecting New Zealand? Which leads to the equally inevitable answer that she was given the power by the Treaty of Waitangi. Then comes the last question - so the right of the New Zealand Parliament to make laws depends on the Treaty? If the answer is yes, as it is, then Maori New Zealanders say how can it be that**

---

<sup>42</sup>When the Crown has chosen to ignore the Treaty, there have been dire consequences for Maori. For example, the Public Works Act in force from 1840-1971 permitted the Crown to take Maori land for public purposes without compensation. This Act was applied to Ngati Kuri reserved land in Kaikoura (amongst others) where land was taken along the coastline for roading purposes without compensation. Any Pakeha land taken for similar purposes under this Act, the owners received compensation (O'Regan, *Arowhenua marae*: 15-9-96; Graham, *The Press*: 19-10-96).

the Treaty is not part of our law? A truly satisfactory answer to that question has yet to be worked out.<sup>43</sup>

For the Crown's part there has been the acknowledgment that there is an obligation on their behalf to recognise Maori rights as guaranteed in the provisions of the Treaty. As the Minister for Treaty of Waitangi Negotiations, Doug Graham, expressed last year: 'the New Zealand Government has the power to make laws for all New Zealanders but, in doing so, must take into account the rights of Maoris to exercise rangatiratanga over matters of concern to them.'<sup>44</sup> The actual sincerity of this statement was borne out by the signing of the non-binding Heads of Agreement between the Crown and the Ngai Tahu on October 4 1996 for a \$170 million settlement package.

While this is a noble effort on behalf of the executive ministers of parliament, parliament is still able to dictate the form to which the recognition of Maori rights takes place.

Even after negotiations and an informal settlement has been reached, as with the Crown/Ngai Tahu Heads of Agreement signing, a formal settlement still has to be analysed and ratified by parliament. Changes affecting the whole tenor of a settlement deal can occur. Though it has been argued that 'parliament...will most certainly be unwilling to revisit negotiations' with Ngai Tahu.<sup>45</sup> Ngai Tahu Principal Negotiator, Sir Tipene O'Regan, is less confident. He maintained that when negotiating for a settlement the judiciary and the executive arms of the Crown may support it, however, the settlement may be pulled apart by constituency perceptions (whether just or unjust) and amateur media perceptions influencing parliamentary debate.<sup>46</sup> Past experience for Ngai Tahu seems to bear out O'Regan's view. When the Treaty of Waitangi (Fisheries Claim) Settlement Act (1992) was passed in parliament important clauses were dropped from the agreement initially settled upon in the Select Committee. The clauses were dropped as a result of pressure from lobby groups such as the Fish and Game Society.<sup>47</sup> One outcome was court battles about whether or not to allocate assets according to traditional tribal property rights, as guaranteed by the Treaty (Ngai Tahu's position), or by a population/needs basis (the position of Urban Maori Authorities and some northern iwi leaders). The result being which

<sup>43</sup>1989: 31-2

<sup>44</sup>Graham, *The Press*: 19-10-95

<sup>45</sup>Editorial, *The Press*: 9-10-96

<sup>46</sup>O'Regan, Lecture: 27-5-96

<sup>47</sup>Ibid

ever view predominated would receive the majority of Maori fishing assets. The High Court ruled in favour of allocation according to traditional tribal property rights. However, this decision may be reviewed if the Urban Maori Authorities appeal against the decision succeeds.

Another problem is that the Crown will settle with an iwi only if the iwi agrees to the extinguishment of Maori rights enshrined in Article Two of the Treaty forever. This was one of the dangers Ngai Tahu experienced in settlement negotiations. As stated by O'Regan, one of the big sticking points in negotiations with the Crown has been the Crown's desire to extinguish aboriginal rights or Article Two rights completely.<sup>48</sup> According to O'Regan, protection of aboriginal rights was 'absolutely fundamental to us' in order to negotiate an adequate settlement.<sup>49</sup> Though the right to litigate against Crown breaches of Ngai Tahu aboriginal rights prior to 1992 will be extinguished by a settlement, Ngai Tahu's 'right to defend them against future breach has been protected.'<sup>50</sup> Thus, although future generations will not be able to litigate against Crown breaches prior to 1992, from 1992 onwards a right to litigate against future breaches to aboriginal rights has been preserved.<sup>51</sup> However, as was discussed in Chapter Six, for some Ngai Tahu beneficiaries, extinguishing rights prior to 1992 is not favoured unless each deed area is directly compensated.

In a situation where Maori rights are negotiated away as part of a settlement deal, rights of generations that exist in the future are extinguished by the generation at present. Such a settlement deal would prove to be unsatisfactory and unenduring. Future generations would be bound to the agreement with no option of redress in the courts against future breaches. Taking this line of argument I am not suggesting that no settlement can ever be reached finally laying to rest past grievances for breaches of Article Two by the Crown. If past generations' aboriginal rights are fulfilled to the greatest extent now possible via a settlement, such rights can and should be extinguished as redress has occurred. After all, this is what a settlement is meant to be providing adequate compensation for. This sentiment is also adhered to by Principal Negotiator Rakihia Tau who stated that 'if the settlement is acceptable to the ones that it

---

<sup>48</sup>Keene, *The Press*: 5-10-96

<sup>49</sup>Keene, *The Press*: 5-10-96

<sup>50</sup>*Ibid.*

<sup>51</sup>Incidentally, this is also a recognition of Article Three of the Treaty. Article Three maintains that Maori New Zealanders are accorded the same rights of citizenship. Importantly this incorporates the right to resort to the courts to have rights determined be they aboriginal or otherwise.

concerns it is extinguishable. The important factor being that if there is an identifiable grievance, there must be an identifiable remedy.<sup>52</sup> In turn, the right of an iwi to relitigate against the Crown for the same set of past breaches which have already been redressed would be removed. With adequate iwi consultation leading to a mandate for settlement this could be achieved. For Ngai Tahu this process is about to begin with a draft Deed of Settlement.

Furthermore, the Crown can impose a settlement structure on all Treaty settlements, which relativises all Maori claims, as was the case with the now abandoned fiscal envelope proposal. Here, a rejected proposal can be doggedly clung on to by the government due to the government of the day controlling parliament and by virtue of parliamentary supremacy. The Treaty, having no legal status, gives Maori no opportunity for redress when the proposal is implemented.

### **Limited and Divisible Sovereignty:**

As pointed out by McHugh, the Treaty 'reserves a distinct political sovereignty of the Maori tribes.'<sup>53</sup> He differentiates between Maori political sovereignty reserved by the Treaty and Maori legal sovereignty ceded by the Treaty. The political sovereignty reserved are those rights and liberties enshrined in the provisions of Article Two, namely, tino rangatiratanga. The legal sovereignty ceded is where sovereignty/kawanatanga was vested in the Crown. Political and legal sovereignty are not mutually exclusive but are interdependent. In other words, as I discussed earlier, the provisions of Articles One and Two have a qualifying effect on each other.

In that the Treaty reserves Maori political sovereignty and its provisions necessarily qualify one another, the indivisible legal sovereign (the Crown-in-Parliament) must be limited and divided in order to fulfil these Treaty obligations. The fact that the Crown established absolute, unlimited and indivisible rule amounts to a breach of the Treaty. For example, Maori political sovereignty has no bearing on legislative outcomes as the Treaty has no legal force. Furthermore, last century's Crown land purchases from Ngai Tahu, not only breached the actual sale contracts, but disregarded the Treaty guarantees of allowing Ngai Tahu tino rangatiratanga over assets they wished to retain. Redress to these grievances were disregarded by numerous governments for

---

<sup>52</sup>R. Tau, Interview: 13-2-97

<sup>53</sup>McHugh, 1991: 55

Tahu from the outset (as with other iwi) but have continually done so until the signing of the Heads of Agreement. The mechanism for allowing such easy disregard to Ngai Tahu and other iwi grievances is the absolute power for law-making and law-breaking residing in the Crown-in-Parliament. Once again, unbridled parliamentary supremacy allows for such outcomes.

As mentioned earlier, parliamentary supremacy is the fundamental rule of our legal system. It has been in place in New Zealand since the adoption of the Statute of Westminster in 1947 and before that, here by proxy, working through the United Kingdom's Parliament. One can argue that at the time of its implementation to the New Zealand Parliament in 1947, a breach of the Treaty occurred. As reasoned above, the application of unlimited parliamentary power overrides Maori political sovereignty as guaranteed by the Crown in the Treaty. It seems that the local circumstances which made New Zealand unique (as opposed to Australia at least) was that a treaty between Maori and Pakeha existed. However, this had no bearing on the implementation of unlimited parliamentary supremacy.

In 1984 there was an attempt to address this situation by the introduction of a Draft Bill of Rights. It was recognised that parliament's legislative power was supreme and functioned unchecked by either a written Constitution or a second house to parliament.<sup>54</sup>

The Draft Bill of Rights included provisions containing fundamental rights and freedoms of all New Zealanders and the actual terms of the Treaty. This affirmed the rights of Maori New Zealanders. The Bill of Rights was to be the supreme law in New Zealand. Hence, the Treaty was to be of supreme legal status and 'regarded as always speaking' in respect to legislation and official actions.<sup>55</sup> The Bill of Rights was to be entrenched. This meant that two-thirds (75%) majority vote in parliament (rather than a simple majority of one) or a referendum of electors would be needed to repeal it.

In this way, the Draft Bill of Rights was a limit to the actual procedure and format (known as a limitation of manner and form) parliament could take with certain statutes. This is differentiated from a limit to the content of parliamentary statutes known as a limitation of substance. An example of a limitation of

---

<sup>54</sup>Palmer, 1987: 220

<sup>55</sup>Ibid: 290



statutes known as a limitation of substance. An example of a limitation of manner and form as opposed to a limitation of substance is that the former proposes that Treaty rights cannot be legislated away without two-thirds majority vote. The latter proposes that no legislation can be passed that is incompatible with the Treaty.<sup>56</sup> A limitation of substance may, on first appearance, seem like the preferable option but it is inflexible and fails to recognise that 'rights cannot be absolute...[and] must be balanced against others rights and freedoms and the welfare of the community.'<sup>57</sup> For example, Ngai Tahu's Treaty claim recognises that not all the quantifiable loss of resources at the hands of the Crown can be recouped lest New Zealand be bankrupted. Estimates have put Ngai Tahu's loss at \$20 billion.<sup>58</sup> Ngai Tahu's rights here are balanced with those of New Zealand society's. As spelt out by Charles Crofts, Chairperson of Te Runanga o Ngai Tahu, in reference to a settlement package: 'we have no wish to bankrupt or damage society and the economy in which we want to prosper.'<sup>59</sup>

The eventual document implemented was a far weaker and diluted version of the Draft Bill of Rights. It is known as The New Zealand Bill of Rights Act (1990). This document is afforded no supreme legal status and can be repealed as easily as any other act of parliament. The Treaty was excluded from the final version on the grounds that 'inclusion would have diminished its *mana*.'<sup>60</sup> To some extent I believe this to be true as the Treaty is New Zealand's founding document which affords it a special or supreme status. This supersedes an ordinary act of parliament, such as the Margarine Act (1908). Its inclusion into such a weak instrument as the New Zealand Bill of Rights Act, able to be repealed with such ease, verges on making the Treaty a parody. Furthermore, the Treaty's inclusion would also be more likely to prevent a more comprehensive recognition of it in the future, such as its entrenchment. However, I am also aware of McHugh's point of the advantages of bringing the Treaty 'more fully into New Zealand's constitutional life' helping to familiarise predominantly Pakeha political and legal institutions with the Maori dimension to New Zealand society.<sup>61</sup> Entrenchment of the Treaty would more likely signify its

---

<sup>56</sup>McHugh, 1991: 55

<sup>57</sup>Palmer, 1987: 221

<sup>58</sup>Keene, *The Press*: 5-10-96

<sup>59</sup>Ibid: 20-4-95

<sup>60</sup>McHugh, 1991: 57

<sup>61</sup> Ibid. Incidentally, I think these predominantly Pakeha institutions should already be well aware of the Maori dimension in New Zealand society by virtue of this country's founding document even though it is afforded no legal force.



Since the Constitution Act (1986) that 'located full sovereign authority entirely in this country', New Zealand has had the opportunity to develop a more indigenous constitution, a constitution that takes into account the local circumstances such as the implications of the Treaty.<sup>62</sup> New Zealand should revisit the entrenchment of the Treaty, along with a Bill of Rights such as that drafted in 1984. This would safeguard the fundamental rights not only of Pakeha New Zealanders, but also of Maori New Zealanders. However, one important change I would make to the Draft Bill of Rights (1984) when revisited is to protect Maori Treaty rights from challenges via the equality provision in the Bill of Rights. McHugh maintains that this was only 'inferentially present' in the Draft.<sup>63</sup> This avoids a clash between Article Two of the Treaty and the equality provision in the Bill of Rights. It also averts 'redneck litigants' bludgeoning Maori Treaty rights with the equality provision.<sup>64</sup> In these cases equality is used as an argument to deny Maori rights enshrined in the Treaty.

The biggest immediate impact of entrenching the Treaty is that it would go some way toward addressing the current imbalance that exists in the Crown. As mentioned earlier, the government of the day controls the executive and legislative arms of the Crown. There is no separation of powers between these two arms which would otherwise act as a check on the excesses of parliamentary power. With this in mind, then taking into consideration the legal systems fundamental rule of parliamentary supremacy, parliament has 'very wide powers to take away our most precious rights and freedoms' or simply ignore them.<sup>65</sup>

Structurally, the entrenchment of the Treaty would effectively divide the legal sovereign, that is, the Crown-in-Parliament. The courts would be given the power to strike down or refuse to apply any parliamentary enactment which is contrary to the Treaty. This is made possible by the Treaty being afforded supreme legal status. In this situation, rather than structurally reforming what amounts to the amalgamated executive and legislative arms in parliament, parliamentary power is simply divided and limited. In short, then, parliamentary power is decreased and the courts power is increased creating a better balance

---

<sup>62</sup>McHugh, 1991: 53

<sup>63</sup>Ibid: 61

<sup>64</sup>Ibid

<sup>65</sup>Palmer, 1987: 220

power is decreased and the courts power is increased creating a better balance between Crown structures. In such an environment there is less opportunity for the erosion of any rights.

It is worth mentioning that in implementing the Treaty as supreme law, the courts are given increased power only in so far as they must apply the Treaty to 'an Act of Parliament, common law rule, or official action' where appropriate.<sup>66</sup> The courts are not given the power to tinker with laws or official actions arbitrarily. The fundamental rule of parliamentary supremacy still exists, but, the rule is shifted from an absolute position to one that is limited.

Entrenchment of the Treaty would comprehensively fulfil the Crown's Treaty obligations. First, when parliament actually drafts new legislation or makes a proposal it will be tempered by the existence of the supreme law, the Treaty. New laws will be more carefully drafted by the law-makers so as to avoid possible contrary enactments. Parliament will be aware that 'certain sorts of laws should not be passed, that certain actions should not be engaged in by Government.'<sup>67</sup> In other words, the Treaty will be an active guide to drafting new legislation and governmental procedures. Second, and related to the last point, the principles of the Treaty will be more closely adhered to. The Crown's right to govern will more likely be carried out with regard to countervailing obligations to Maori New Zealanders. The courts being able to actively apply the Treaty will ensure this. Governance in good faith in regard to Maori New Zealanders' rights and active protection of those rights will be seen to be done. Third, with regard to settlement deals between iwi and the Crown, the Crown will be unable to extinguish Maori rights into the future as part of any deal. The Treaty, as a supreme legal force, would automatically prevent such an occurrence. Negotiations could be carried out that do not turn on the issue of whether the Crown will be able to extinguish Treaty rights into the future.

Finally, the constitutionalisation of the Treaty by entrenchment would bring it fully 'into the legal fabric of New Zealand society.'<sup>68</sup> Political and legal institutions would have to adapt their processes to Maori Treaty rights and specific Crown obligations.

---

<sup>66</sup>Ibid: 221

<sup>67</sup>Ibid.

<sup>68</sup>McHugh, 1991: 61

current situation where the Treaty has no legal force. In the event of a deed of settlement, which is imminent now the non-binding Heads of Agreement has been signed, Ngai Tahu will contract with the Crown in a settlement, this was done in Tainui's settlement in 1995.<sup>69</sup> In that Ngai Tahu will contract with the Crown, the settlement will fall under the law of contract and the common law. This way the settlement is enforceable in the courts and will bind the Crown. In other words, a 'Claytons' limit to parliamentary supremacy will be constructed. Parliament will be unwilling to repeal any sections of the eventual settlement act for fear of being sued for a breach of contract. Furthermore, if the law of contract is tinkered with a myriad of other societal contracts will fall apart as they are based on the same contract principles.<sup>70</sup>

The danger still exists, however, that before the deed of settlement becomes an act, the bill can be changed and adjusted by parliament. The actual negotiated settlement may, after going through a parliamentary Select Committee, come out looking like a different 'creature' altogether, as happened with the Treaty of Waitangi (Fisheries Claim) Settlement Act (1992). Therefore, having an entrenched Treaty would be an advantage. The settlement bill could be scrutinised in relation to the Treaty during parliamentary deliberations. The final act of parliament would then have to embrace Article Two of the Treaty rather than undermine it. With an entrenched Treaty also, parliament could not prohibit litigation on the deed of settlement act when it departs from what was actually agreed to in negotiations. With the Treaty being supreme law, the courts could ensure this.

---

<sup>69</sup>O'Regan, Lecture: 27-5-96

<sup>70</sup>Ibid